CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 517

GERRIT W. CLASON, APPELLANT,

vs.

THE STATE OF INDIANA

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

FILED DECEMBER 12, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 517

GERRIT W. CLASON, APPELLANT,

vs.

THE STATE OF INDIANA

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

INDEX.

	Original	Print
Proceedings in Supreme Court of Indiana	1	1
Assignments of error	1	1
Record from Circuit Court of Elkhart County	2	1
Caption (omitted in printing)	2	
Affidavit for state warrant	2	1
Bench warrant and return	4	2
Motion to quash affidavit	5	3
Order sustaining motion to quash	6	3
Notice of reversal by Supreme Court	8	4
Opinion, Shake, J., Supreme Court	9	5
Opinion, Shake, J., Supreme Court, denying petition for rehearing	13	8
Judgment of Supreme Court	18	11
Order overruling motion to quash	19	12
Second motion to quash affidavit and order overruling same	19	13
Finding of Court	21	13
Motion in arrest of judgment	21	14
Motion for new trial	22	15
Judgment	23	15
Bond on appeal (omitted in printing)	24	
Order filing bill of exceptions	29	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 13, 1939.

—9556

	Original	Print
Record from Circuit Court of Elkhart County—Continued.		
Bill of exceptions No. 1	30	16
Caption and appearances	30	16
Stipulation of evidence	32	17
Reporter's certificate (omitted in printing)	37	
Judge's certificate	38	21
Praecipe for transcript on appeal	40	22
Clerk's certificate (omitted in printing)	41	
Notice of appeal	42	22
Docket entries	44	23
Judgment	45	24
Opinion, Shake, J.	46	24
Petition for rehearing	55	29
Order denying petition for rehearing	58	30
Excerpts from appellant's brief	59	31
Petition for appeal, assignments of error and prayer for reversal	68	36
Order allowing appeal	72	38
Bond on appeal (omitted in printing)	75	
Citation and service (omitted in printing)	80	
Praecipe for transcript of record	82	40
Appellee's praecipe for additional portions of record	88	42
Excerpts from appellee's brief	91	43
Clerk's certificate (omitted in printing)	133	
Statement of points to be relied upon and designation as to printing record	134	74

[fol. 1]

IN SUPREME COURT OF INDIANA

No. 27099

GERRIT W. CLASON, Appellant,

vs.

STATE OF INDIANA, Appellee

ASSIGNMENT OF ERRORS—Filed June 17, 1938

Gerrit W. Clason, appellant in the above entitled cause, says that there is manifest error, prejudicial to him, in said cause in this, to wit:

1. The Elkhart Circuit Court erred in overruling appellant's first motion to quash the affidavit herein.

2. The Elkhart Circuit Court erred in overruling appellant's second motion to quash the affidavit herein.

3. The Elkhart Circuit Court erred in overruling appellant's motion in arrest of judgment.

4. The Elkhart Circuit Court erred in overruling appellant's motion for a new trial.

Wherefore appellant prays that the judgment of said Elkhart Circuit Court be reversed, and for all other proper relief.

Wm. H. Thompson, Albert L. Rabb, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 2] [Caption omitted]

IN CIRCUIT COURT OF ELKHART COUNTY

THE STATE OF INDIANA

vs.

GERRIT W. CLASON

AFFIDAVIT FOR STATE WARRANT—Filed July 26, 1937

[fol. 3] Ralph E. Logan swears that on or about the 24th day of July, 1937, at the County of Elkhart and State of

Indiana, one Gerrit W. Clason did, then and there, unlawfully haul and transport, along and over a public highway commonly known and designated as United States Road Number (20) Twenty, a certain dead animal, to wit: a horse, which said dead horse had not been slaughtered and intended for human food and which said dead horse was then and there being hauled and transported to a disposal plant located within the State of Illinois, he the said Gerrit W. Clason not then and there being licensed so to do as provided in Chapter 278 of the Acts of the 80th Session of the General Assembly of the State of Indiana, then and there being, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Indiana.

Ralph E. Logan.

STATE OF INDIANA,
County of Elkhart, ss:

Subscribed and sworn to before me, on this 26th day of July, 1937.

Glen R. Sawyer, Prosecuting Attorney. (Seal.)
George L. Pepple, Deputy Prosecuting Attorney. (Seal.)

[File endorsement omitted.]

[fol. 4] IN CIRCUIT COURT OF ELKHART COUNTY

BENCH WARRANT

THE STATE OF INDIANA,
Elkhart County, ss:

The State of Indiana to the Sheriff of Elkhart County, Greeting:

You are hereby Commanded to Arrest Gerrit W. Clason forthwith, and have him instanter before the Judge of the Elkhart Circuit Court to answer an affidavit for Violation Dead Animal Disposal Law.

Witness my hand and seal of the said Court hereunto affixed, at Goshen, this 26th day of July A. D. 1937.

Thomas M. Long, Clerk Elkhart Circuit Court. (Seal.)

Endorsed: Circuit Court. State of Indiana vs. Gerrit W. Clason. Bench Warrant. Bond fixed at $—. This writ came to hand July 26th, 1937. Served this writ by arresting Gerrit W. Clason, and by having him in Court. Done this 26th day of July 1937. Edward J. Bourke, Sheriff Elkhart County.

[fol. 5] IN CIRCUIT COURT OF ELKHART COUNTY

[Title omitted]

MOTION TO QUASH AFFIDAVIT—Filed July 26, 1937

The defendant, Gerrit W. Clason, moves the Court to quash the affidavit filed against him herein on the following grounds:

First, that the facts stated in the affidavit do not charge and constitute a public offense.

Second, that the affidavit contains matter which, if true, constitutes a legal justification of the offense charged.

Guy W. Dausman, Attorney for Defendant.

MEMORANDUM

The affidavit is brought under Section 11 of Chapter 285 of the Acts of the 80th Session of the General Assembly of the State of Indiana. That Section construed as an effort or attempt on the part of the Indiana Assembly to control the transportation of dead animals from Indiana out of the State would be a flagrant encroachment upon the exclusive authority of the Federal Congress to regulate interstate commerce.

[fol. 6] Construed upon the opposite theory, the allegation of the affidavit that the defendant transported a dead animal over the highways of Indiana with intent to take the body out of the State, constitutes a complete legal justification of his act.

Guy W. Dausman, Attorney for Defendant.

[File endorsement omitted.]

DEFENDANT RELEASED ON OWN RECOGNIZANCE

And said defendant is now by the Court released on his own recognizance.

IN CIRCUIT COURT OF ELKHART COUNTY

[Title omitted]

ORDER SUSTAINING MOTION TO QUASH—July 27, 1937

Comes now the State of Indiana by its Prosecutor, Glen R. Sawyer, and comes also the defendant in person and by Guy W. Dausman, his attorney, and the motion to quash affidavit is now by the Court sustained, to which ruling of the Court the State of Indiana at the time excepts.

The Court being of the opinion that the defect in said affidavit cannot be avoided by the filing of a new affidavit [fol. 7] for reason that in the opinion of the Court the Statute, upon which said affidavit is based, is unconstitutional in so far as it affects the right of the defendant to transport the bodies of dead animals out of the State of Indiana, therefore, it is now ordered by the Court that the defendant be and he is now discharged.

Comes now the State of Indiana by its Prosecutor, Glen R. Sawyer, and prays an appeal of this cause to the Supreme Court of Indiana, which appeal is now by the Court granted.

[fol. 8] IN SUPREME COURT OF INDIANA

In the Case of

THE STATE OF INDIANA

vs.

GERRIT W. CLASON

Appealed from the Elkhart Circuit Court

NOTICE OF REVERSAL

To the Clerk of the Circuit Court of said County, Greeting:

You are hereby notified that the Supreme Court of said State has on this day Reversed with directions the judgment of the Court below in the above entitled cause.

THE STATE OF INDIANA, ss:

I, Paul Stump, Clerk of the Supreme Court of said State, certify that the above is a true statement of the decision of said Court in the above entitled cause.

Witness, my name and the seal of said Court this 7th day of February 1938.

Paul Stump, Clerk Supreme Court. (Seal.)

Endorsed: Filed Feb. 8, 1938. Thomas M. Long, Clerk, Elkhart Circuit Court.

[fol. 9] IN SUPREME COURT OF INDIANA

In the case of

STATE OF INDIANA

vs.

GERRIT W. CLASON

Appealed from the Elkhart Circuit Court

OPINION—February 7, 1938

Come the parties by their attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

SHAKE, J.:

The appellee, as defendant below, was charged by affidavit in one count with a misdemeanor for the violation of Chapter 278, Sec. 11, Acts of 1937. There was a motion to quash on the grounds (1) that the facts stated in the affidavit did not charge a public offense, and, (2) that the affidavit contained matter which, if true, constituted a legal justification of the offense charged. The trial court sustained the motion to quash and discharged the defendant, with a finding that the [fol. 10] statute is unconstitutional. It was not claimed that the charge was otherwise insufficient, and the State has appealed.

The affidavit alleges in substance that on a date named therein the defendant unlawfully hauled and transported over a certain public highway in Elkhart County, Indiana, to a disposal plant located in the State of Illinois, a dead horse, which had not been slaughtered and intended for human food, the defendant not being licensed so to do, as required by the above act.

The act upon which the prosecution was based is lengthy and we deem it sufficient for the purposes of this appeal to summarize its pertinent provisions. The title discloses that its purpose is to "control animal diseases and to regulate the transportation and disposal of the bodies of dead animals". The first section recites that it is an exercise of the polise power of the State to prevent the spread of animal diseases, to conserve the public health, and to protect the citizens against dangers and nuisances. The act has no application to persons slaughtering or butchering animals for human consumption, nor to the transportation of the products thereof. The disposal of the bodies of dead foul, birds, fish, reptiles and of small animals, such as dogs and cats and small game, are likewise exempted.

Standards for disposal plants are set up and frequent inspections thereof provided for. Annual licenses are required for these establishments and the cost of administering the act is paid out of the proceeds thereof. Only holders of licenses may operate vehicles for the transportation of dead animals on the public highways of the State, and there are express requirements as to the equipment of these vehicles. The beds in which dead animals are hauled shall be tight, so as to avoid drippings and seepings, shall be of [fol. 11] sufficient size and depth to hide the contents thereof from the view of other persons using the highways, and such vehicles are required to be thoroughly cleansed and disinfected after use. The act authorized the owner of any dead animal to bury or burn the same on his own premises, if they are without the corporate limits of any city or town; such owner may also salvage the skin of any dead animal and transport it to market, if such animal shall not have died of a contagious disease.

Appellee's brief has been of no aid to the court in the consideration of this case. It contains no helpful propositions, and no points and authorities, beyond the bare assertion that the act upon which the prosecution is based violates Article I, Section 8, Clause 3, of the Constitution of the United States. This is the so-called interstate commerce clause, and it provides: "The congress shall have power to * * * regulate commerce * * * among the several states."

While the laws of the state must yield to Acts of Congress passed in execution of the powers conferred upon it by the Constitution, the mere grant to Congress of the power to

regulate commerce among the states does not, of itself and without legislation by Congress, impair the authority of the states to establish such reasonable regulations as are appropriate for the protection of the health, the lives and the safety of their people. New York, etc., R. Co. v. New York (1897) 165 U. S. 628, 631, 17 S. Ct. 418, 41 L. Ed. 853.

When the local police regulation has real relation to the suitable protection of the people of the State, and is reasonable in its requirements, it is not invalid because it may [fol. 12] incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its constitutional authority. Savage v. Jones (1912) 225 U. S. 501, 32 S. Ct. 715, 56 L. Ed. 1185; Austin v. Tennessee (1900) 179 U. S. 343, 349, 21 S. Ct. 132, 45 L. Ed. 224, affirming (1898) 101 Tenn. 563, 48 S. E. 305, 70 Am. St. Rep. 703, 50 L. R. A. 478.

Under the exercise of the police power it has been held that a state may adopt laws: Prohibiting the shipment out of the state of citrus fruits which are unripe or otherwise unfit for consumption, Slight v. Kirkwood (Fla. 1915) 237 U. S. 52, 35 S. Ct. 501, 59 L. Ed. 835; prohibiting the slaughtering of calves unless in healthy condition and at least four weeks old, and prohibiting the shipment of veal from such animals to or from any part of the state, People v. Bishopp (1904) 44 Misc. Rep. 12, 89 N. Y. S. 709; prohibiting healthy persons, either from within or without the State, entering an area infected with a contagious disease. Campagnie Francaise v. Louisiana State Board of Health (1902) 186 U. S. 380, 385, 22 S. Ct. 811, 46 L. Ed. 1209; prohibiting the disinterment or exhuming of the body of a deceased person, even when it is intended to transport the remains of an alien to his own country for final sepulture, without first obtaining a permit from the proper officer, In re Wong Yung Quy (C. C. Cal. 1880) 2 Fed. 624.

It has not been pointed out to us wherein the subject-matter of the act before us conflicts with any federal legislation, and we know of none. We find nothing in its purposes or provisions repugnant to the settled principles of constitutional law. The wisdom of the law was for the determination of the legislative branch of the government and [fol. 13] we think the objectives being for the protection of the public health, the health of domestic animals of great economic value, and the prevention of nuisances on the highways of the State were all within the purview of the powers

of the General Assembly. We are obliged to indulge the presumption that the act is constitutional unless and until the contrary is made to appear. Weisenberger v. State (1931) 202 Ind. 424, 175 N. E. 238; Levy v. State (1903) 161 Ind. 251, 68 N. E. 172; Overshiner v. State (1901) 156 Ind. 187, 59 N. E. 468. We therefore hold the act valid and that the affidavit charged a public offense.

Reversed, with directions to overrule appellee's motion to quash and to require him to plead to the charge.

IN SUPREME COURT OF INDIANA

OPINION DENYING PETITION FOR REHEARING

And afterwards, to-wit: on the 10th day of March, 1938, being the 94th Judicial Day of the November Term, 1937, appellee's petition for rehearing was denied with the following opinion pronounced by

SHAKE, J.:

In our original opinion we said: "Appellee's brief has been of no aid to the court in the consideration of this case. It contains no helpful propositions, and no points and authorities, beyond the bare assertion that the act upon which the prosecution is based violates Article I, Section 8, Clause 3, of the Constitution of the United States". The appellee, through other counsel, has now presented a petition for rehearing, supported by an able and exhaustive brief. For this reason we deem it proper to express our views with reference to the propositions therein contained.

We find no objection to the statement of general principles contained in appellee's petition, to the effect that in [fol. 14] passing upon the constitutionality of an act, its purpose must be determined from its natural and reasonable effect; that the legislative declaration of purpose is not binding, and that whether a regulation of a useful business is a valid exercise of police power is a judicial question.

The appellee has cited a number of cases from this court and from the Federal courts to sustain his claim that the statute under consideration constitutes an unauthorized interference with interstate commerce. One of the clearest and most comprehensive statements that we have seen with reference to the authority of the states to legislative upon

such subjects, is to be found in the case of Oregon-Washington Railroad & Navigation Co. v. State of Washington (1926) 270 U. S. 87. In that case Mr. Chief Justice Taft said: "In the relation of the States to the regulation of interstate commerce by Congress there are two fields. There is one in which the State can not interfere at all, even in the silence of Congress. In the other * * * the State may exercise its police power until Congress has by affirmative legislation occupied the field by regulating interstate commerce and so necessarily has excluded state action". In the same case the distinguished jurist further says: "In the absence of any action taken by Congress on the subject matter, it is well settled that a State in the exercise of its police power may establish quarantines against human beings or animals or plants, the coming in of which may expose the inhabitants or the stock or the trees, plants or growing crops to disease, injury or destruction thereby, and this in spite of the fact that such quarantines necessarily affect interstate commerce."

If a state may, in the exercise of its inherent police power, [fol. 15] adopt quarantine statutes prohibiting the importation of dangerous or noxious articles or objects, we think it may likewise, inferentially, license and regulate the use of its highways to accomplish the same ends, even though such regulation may incidentally affect interstate commerce. Kidd v. Pearson (1888) 128 U. S. 1.

It seems to us that the proper disposition of this appeal is to be found in the answers to these questions: (1) Is Chapter 278, Acts of 1937, a reasonable quarantine regulation within the police power of the State which incidentally affects interstate commerce, or (2) is it a direct interference with interstate commerce, under the guise of an exercise of the police power?

We cannot, in the interest of space and time, review all of the authorities cited by the appellee, but shall point out wherein several of them are not applicable to the situation with which we are here dealing. The cases reviewed are typical of the others relied upon.

In The State, ex rel. Corwin v. The Indiana etc. Mining Co. (1889) 120 Ind. 575, 22 N. E. 778, this court considered an act prohibiting the transportation of natural gas from any point within this State to any point or place without the State. The court held that the interference with interstate commerce, under the circumstances shown, was direct

and not merely incidental. In the opinion Chief Justice Elliott said: "The act does not assume to provide for the safety, health, or comfort of the citizens * * *. It is not a regulation of the mode of procuring, transporting, or using natural gas designed to secure the health, safety, or comfort of the citizens of Indiana. * * * The act can not be taken out of the operation of the Federal decisions upon [fol. 16] the theory that it is a valid exercise of the police power resident in every sovereign state, for the theory is without foundation".

In Jamieson v. The Indiana Natural Gas & Oil Co. et al. (1891) 128 Ind. 555, 28 N. E. 76, this court had under consideration another natural gas statute which prohibited the transportation of gas within or without the State under artificial pressure exceeding 300 pounds per square inch. In holding the statute valid, the court remarked: "We do not assume that a State can legislate for the regulation of interstate commerce—that power is undoubtedly Federal—nor do we assume that under the guise of exercising the police power there may be a regulation of commerce between the States, but we do assume that it is settled by the decisions that State legislation is not invalid simply because it operates upon or affects commercial commodities or instrumentalities. So long as there is nothing more than an exercise of the police power, and no regulation of commerce, there is nothing more than the exercise of a State power".

In Manufacturers Gas etc. Co. v. The Indiana Natural Gas etc. Co. (1900) 155 Ind. 545, 58 N. E. 706, this court held another statute regulating the transportation of natural gas unconstitutional and said: "Nothing done by the appellee is complained of, excepting only that it removes natural gas out of the State of Indiana. No ground for the exercise of the police power of the State to prevent such removal is shown. Nothing, save the naked right to transport the gas beyond the limits of this State, is contested in this action. The only reason which can be urged in support of the restraint sought to be imposed upon the appellee is that the supply of natural gas being limited, [fol. 17] and the article being one of great value and convenience, its use ought to be reserved for and enjoyed by the people of this State, to the exclusion of the inhabitants of any other State".

The appellee has also cited and quoted from Foster-Fountain Packing Co. et al. v. Haydel (1928) 278 U. S. 1, 73, L. Ed. 147. This is the so-called Louisiana "Shrimp case" and involved the constitutionality of a statute of that state which prohibited the shipment to other states of shrimp taken from the waters of Louisiana, unless they were processed in its factories. The act related directly to interstate commerce, and the court said: "But by permitting its shrimp to be taken and all the products thereof to be shipped and sold in interstate commerce, the State necessarily releases its hold and, as to the shrimp so taken, definitely terminates its control". The act in question was in no sense a health or quarantine measure, and we do not consider it as bearing upon the proposition before us.

In the case of Vandalia Coal Co. et al. v. Special Coal & Food Comm. of Indiana et al. (1920) 268 Fed. 572, the court held invalid an order of the Coal and Food Commission of Indiana requiring coal mines which had contracted to deliver their products outside the State to sell them within the State. This was held to be a direct burden on interstate commerce. But the court recognized the presumption that a statute is valid until the contrary is shown, and that a state is free to "meet and combat" wrongs that injure "the safety and welfare of the people".

We adhere to our former opinion that Chapter 278, Acts of 1937, is for the protection of the public health, the health of domestic animals of great economic value, and the pre-[fol. 18] vention of nuisances on the highways. It does not directly or materially place a burden on interstate commerce, and the extent to which it affects commerce of that character may be said to be clearly incidental. We hold that until the Congress of the United States invades the field and legislates upon the subject, the act must be regarded as a proper and valid exercise of the inherent police power of the State of Indiana.

Rehearing denied.

IN SUPREME COURT OF INDIANA

JUDGMENT

And afterwards, to wit: On the 10th day of March, 1938, the Court, being fully advised, overruled the petition for

rehearing heretofore filed herein by the Appellee with an opinion.

It is, therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things reversed at the cost of the appellee all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellant recover of the appellee the sum of $30.05 for costs and charges in this behalf expended.

THE STATE OF INDIANA,
Supreme Court:

I, Paul Stump, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In Witness Whereof, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this 29th day of April, 1938.

Paul Stump, C., S. C. (Seal.)

Endorsed: Filed May 2, 1938. Thomas M. Long, Clerk, Elkhart Circuit Court.

[fol. 19] IN CIRCUIT COURT OF ELKHART COUNTY

[Title omitted]

ORDER OVERRULING MOTION TO QUASH—June 2, 1938

Comes now the State of Indiana by its Prosecutor, Stanley A. Raymer, and comes also the defendant into open Court in person and by Church & Chester and Thompson and Rabb, his attorneys, and conforming to the ruling of the Indiana Supreme Court, which decision of the Supreme Court has been heretofore spread of record in this Court, the motion to quash affidavit is now by the Court overruled. It is now agreed by and between the parties that a new motion to quash affidavit may be filed. Comes now the defendant and files his new motion to quash affidavit, said new motion being in words and figures as follows, to-wit:

In Circuit Court of Elkhart County

[Title omitted]

Motion to Quash Affidavit—Filed June 2, 1938

Gerrit W. Clason, defendant herein, moves the Court to quash the affidavit filed against him herein, upon each of the following grounds, to wit:

1. The facts stated in the affidavit do not charge and constitute a public offense.

[fol. 20] 2. The affidavit contains matter which, if true, constitutes a legal justification of the offense charged.

3. Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, upon which said affidavit is based, is not valid as a regulation but is invalid as in violation of Article I, Section 8, Clause 3, of the Constitution of the United States as a prohibition of interstate commerce and yet a sanction of intrastate commerce in legitimate articles of commerce, viz. the bodies of large dead animals not slaughtered for human food.

4. Chapter 278 of the Acts of 1937 General Assembly of the State of Indiana is invalid as violative of Article I, Section 8, Clause 3, of the Constitution of the United States, the protection of which defendant invokes, as permitting the transportation and sale in intrastate commerce of bodies of large dead animals not slaughtered for human food, as legitimate articles of commerce, while prohibiting all transportation and sale of such articles in interstate commerce.

Church & Chester, Thompson & Rabb, Attorneys for Defendant.

[File endorsement omitted.]

Which new motion the Court, upon due consideration, now overrules, to which ruling of the Court the defendant at the time excepts.

[fol. 21] In Circuit Court of Elkhart County

Finding of Court—June 2, 1938

And said defendant now appears and waives arraignment and pleads not guilty to the charges herein against him.

And this cause being at issue, is now submitted to the Court for hearing, trial and determination, a Jury by agreement being waived. A stipulation of all the evidence is now introduced and read in evidence, as the sole evidence given in the trial of this cause. And the Court having heard all the evidence adduced, now finds that the defendant is guilty as charged, and that he should be fined in the sum of twenty-five ($25.00) Dollars.

IN CIRCUIT COURT OF ELKHART COUNTY

[Title omitted]

MOTION IN ARREST OF JUDGMENT—Filed June 2, 1938

The defendant, Gerrit W. Clason, moves to arrest the judgment of this Court, upon each of the following grounds, to-wit:

1. The facts stated in the affidavit do not charge and constitute a public offense.

2. The affidavit contains matter which, if true, constitutes a legal justification of the offense charged.

3. Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, upon which said affidavit is based, is not valid as a regulation but is invalid as in violation of Article I, Section 8, Clause 3, of the Constitution of the United States as a prohibition of interstate commerce and yet a sanction of intrastate commerce in legitimate articles [fol. 22] of commerce, viz., the bodies of large dead animals not slaughtered for human food.

4. Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana is invalid as violative of Article I. Section 8, Clause 3, of the Constitution of the United States, the protection of which defendant invokes, as permitting the transportation and sale in intrastate commerce of bodies of large dead animals not slaughtered for human food, as legitimate articles of commerce, while prohibiting all transportation and sale of such articles in interstate commerce.

Church & Chester, Thompson & Rabb, Attorneys for Defendant.

[File endorsement omitted.]

Which motion the Court, upon due consideration, now overrules, to which ruling of the Court said defendant at the time excepts.

[fol. 23] In Circuit Court of Elkhart County

[Title omitted]

Motion for New Trial—Filed June 2, 1938

Gerrit W. Clason, defendant therein, hereby moves for a new trial of the above entitled cause upon each of the following grounds, to wit:

1. The decision of the Court is contrary to law.

2. The decision of the Court is not sustained by sufficient evidence.

Wherefore defendant prays for a new trial of said cause.
Church & Chester, Thompson & Rabbs, Attorneys for Defendant.

[File endorsement omitted.]

Which motion the Court, upon due consideration, now overrules, to which ruling of the Court said defendant at the time excepts.

In Circuit Court of Elkhart County

Judgment—June 2, 1938

Thereupon the Court now renders judgment upon its finding herein.

It is, therefore, considered, ordered and decreed by the Court that the defendant, Gerrit W. Clason, for the offense so by him committed do make his fine to the State of Indiana in the penal sum of Twenty-five ($25.00) Dollars, and that he pay and satisfy the costs and charges herein taxed at — Dollars and — Cents.

The defendant now prays an appeal of this cause to the Supreme Court of Indiana, and asks that sixty (60) days [fols. 24-28] be given within which to file all bills of exceptions, which appeal is now by the Court granted.

And the defendant is now by the Court given and granted sixty (60) days time within which to file all bills of exceptions.

Bond on appeal for $500.00 approved and filed June 2, 1938, omitted in printing.

[fol. 29] In Circuit Court of Elkhart County

[Title omitted]

Order Filing Bill of Exceptions—June 4, 1938

Comes now the State of Indiana by its Prosecutor, Stanley A. Raymer, and comes also the defendant, by Counsel, and the defendant now presents to the Judge in open Court and within the time allowed by the Court, his original Bill of Exceptions No. 1 containing all of the evidence given in said cause, which Bill of Exceptions is now by the Court approved and signed and ordered filed with the Clerk of this Court and made a part of the record in this cause, which is accordingly now done on this 4th day of June, 1938, and which Bill of Exceptions is in the following words and figures, to-wit:

[fol. 30] In Circuit Court of Elkhart County, April Term, 1938

No. 3969

State of Indiana

vs.

Gerrit W. Clason

Defendant's Bill of Exceptions No. 1—Filed June 4, 1938

Trial Before the Honorable Aldo J. Simpson, Judge

June 2, 1938

Appearances

For the State: Stanley A. Raymer, Prosecuting Attorney.
For the Defendant: Church & Chester, of Elkhart, Indiana; Thompson & Rabb, of Indianapolis, Indiana.

[File endorsement omitted.]

[fol. 31] [Title omitted]

Preface

Be it Remembered: That on the 2d day of June, 1938, the above entitled cause came on for trial before the Honorable Aldo J. Simpson, Judge of said court, without the intervention of a jury; the defendant being present in person and by counsel; that on the trial of said cause and in support of the respective issues thereon, the plaintiff and defendant joined in submitting to the court, in form of a written stipulation, an agreed statement of all the evidence in behalf of both parties, and no objections were made or exceptions taken to any such evidence by either party; that said written stipulation of the evidence was introduced and admitted at the trial and the same constituted all the evidence at the trial in behalf of all parties; that Roberta Hauder, as official shorthand reporter of said court, received said written stipulation and after the conclusion of the trial and on the request of the defendant therein, made out and furnished said defendant with a transcript written in longhand by her of all the aforesaid evidence given in said cause, which longhand manuscript was duly certified by said reporter to be a full, true and complete transcript of all such evidence; and which original longhand manuscript of said evidence so made by said reporter is incorporated into this bill of exceptions number one, and made a part thereof, [fol. 32] and is in words and figures following, to-wit:

And thereupon the plaintiff, and the defendant, in lieu of any oral or documentary evidence by either party and as all the evidence offered in behalf of both parties under the issues, introduced and read in evidence a written stipulation of facts agreed to by said parties, and being as follows:

In Circuit Court of Elkhart County

[Title omitted]

Stipulation of Evidence

The parties hereto, in open court at the trial of the above entitled cause, hereby stipulate and agree that the following facts shall constitute all the evidence in this cause in behalf of both parties, with all the force and effect

as though proven by competent and admissible evidence offered by or on behalf of the respective parties upon their respective theories of the issues; but neither party hereby admits any contention of the other party as to the legal effect and interpretation of such facts, as applied to the validity or proper construction of the statute here involved, viz., Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, which was in effect at all times herein referred to:

1. Defendant, Gerrit W. Clason, a resident of Elkhart County, State of Indiana, on July 24, 1937, hauled and transported in his motor vehicle along and over a certain public highway, of the State of Indiana, commonly known [fol. 33] as United States Road Number Twenty (20), in and through said County of Elkhart and State of Indiana, the body of a certain large dead animal, to-wit, a horse, which had died on its then owner's premises in said county and state, not less than 24 hours theretofore, by reason of cause unknown.

2. Defendant, Gerrit W. Clason, at the time and place aforesaid, on said July 24, 1937, intended to and was in the act of transporting said body in its entirety from such owner's premises over said highway to a disposal and rendering plant located wholly within the State of Illinois, and did so transport it.

3. That at said time said Clason was not acting therein either as or for any governmental official or agency; was not acting therein for anyone owning or operating any Indiana disposal plant or the vehicles thereof, holding a certificate, or a license and vehicle certificates, issued under said Act of 1937, Chapter 278, or under any other statute; was not excepted or exempted in any such respects, or otherwise, by the terms of said Act, from a compliance therewith; and did not have a license, or certificate, or any vehicle certificate, from the State of Indiana, issued under authority of said Act, or of any other Act, authorizing him to engage in such transportation, or traffic in, or disposal of such bodies of dead animals.

4. Defendant, Gerrit W. Clason, obtained said dead body by purchase from the owner thereof, paid the purchase price therefor, and entered the premises of said owner by his per-

mission in order to and did there obtain and load said dead body upon his said motor vehicle and drove said motor vehicle directly, as aforesaid, to said disposal plant in the [fol. 34] State of Illinois for the purpose of selling said dead body to said disposal plant and he did sell it, at a profit for himself, to said Illinois disposal plant solely for conversion into grease and other commercial products derived from such carcass; that said animal had not been slaughtered or intended, nor was it fit, for human food.

5. That both in Indiana and in Illinois and elsewhere, the bodies of dead animals quickly decompose, where not slaughtered and promptly prepared and preserved for human food. That such decomposition starts within five hours after death and unless the body of a large dead animal, not slaughtered and prepared and preserved for human food, such as that herein mentioned, is properly disposed of within twenty-four hours after death by burial, or by prompt delivery thereafter to a disposal plant for destruction by burning or cooking, the effects of such advanced state of decomposition will produce noxious odors over a wide area and an unsightly appearance wherever exposed to view.

6. The majority of large animals die from a contagious or an infectious disease. Some such diseases which are transmissible to men or to other animals are: (As to horses) glanders, anthrax, septicemia, tetanus, rabies; (As to cattle) anthrax, septicemia, Bang's disease, streptococcic mammitis, tetanus, rabies; (As to swine) anthrax, septicemia, brucellosis (infectious abortion), tetanus, rabies.

7. Such diseases, and also hog cholera, may be spread through seepage or drippings from vehicles used in transporting bodies of animals that have died of some such disease, or through the bringing of germs by worms to the surface of the earth whereunder animals have been buried that [fol. 35] have died of some such disease. Some diseases, such as anthrax and symptomatic anthrax, are caused by germs which sporulate and in such latent form may live for long periods when in media not suitable to their growth, such as earth. Such germs may contaminate farms, and be spread by rains to wide areas when they are brought to

the surface by earth worms and other forms of parasites, and thus may spread animal diseases.

8. The transportation of bodies of dead animals in vehicles from which seepage and dripping do not occur, and with the bodies covered and which vehicles are properly and thoroughly cleansed and sterilized, tends to minimize the spread of such diseases when animals have died from any of such diseases. The aforesaid type of vehicles, together with such cleaning and disinfecting of such vehicles after every transportation of such bodies, tends not only to minimize the spread of such diseases, but also to prevent the breeding of flies as carriers of such disease germs and creating offensive odors and conditions affecting the public. The burial, burning, or cooking of such bodies at a disposal plant, properly constructed and supervised, further tends to minimize the spread of such diseases when animals have died from such or any of such diseases. The transportation of such bodies in vehicles, constructed, cleansed and operated as aforesaid, and in which said bodies cannot be seen by persons using the highways, also tends to obviate sights, odors and conditions that would be offensive and annoying to the public.

9. At all times mentioned herein the State of Indiana had and now has a State Veterinarian and such facilities for the enforcement of the statute as are required by said [fol. 36] Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana; also there have been at all times herein mentioned and now are thirty-eight disposal plants, so distributed within the State of Indiana and licensed and operating under said Act, located at such places and with such vehicular and other equipment and capacity as that they could dispose of all bodies of large animals, not intended and slaughtered for human food, as die within the territorial limits of the State of Indiana, whenever such bodies were transported to them for disposal, all in accordance and compliance with the requirements of said Act.

10. Under the provisions of Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, said Gerrit W. Clason, as such purchaser, could not have obtained a permit or license to haul or transport the body of any large dead animal, not slaughtered and intended for human food, over any public highway of or in the State

of Indiana, into the State of Illinois or any other State, for sale or reduction there.

Stanley A. Raymer, Prosecuting Attorney. Church & Chester, Thompson & Rabb, Attorneys for Defendant.

(On June 1, 1938.)

And this was all the evidence given in this cause.

[fol. 37] Official reporter's certificate to Bill of Exceptions No. 1 omitted in printing.

[fol. 38] In Circuit Court of Elkhart County

Judge's Certificate to Bill of Exceptions No. 1

Be it Remembered: That on this 4th day of June, 1938, and within the time heretofore allowed by the court for filing all bills of exceptions in the case wherein State of Indiana is plaintiff and Gerrit W. Clason is the defendant, being Cause Number 3969 in the Elkhart Circuit Court, the defendant in said cause presented to the court, in open court, the attached and foregoing longhand manuscript, being a transcript of all the evidence offered in said cause, consisting of a written stipulation thereof by both the parties, incorporated in this, the defendant's bill of exceptions number one, containing such evidence, and asks that the same be approved, signed, sealed and filed in this cause.

The court, having seen and examined the same, finds that the said longhand manuscript is the same that was prepared and furnished to the defendant by the official reporter of this court and thereupon duly incorporated by the defendant in this bill of exceptions number one for presentation to the court, and that said bill of exceptions number one is full, true and complete and contains all the evidence given in said cause, which evidence consisted solely of a written stipulation of all the facts agreed upon and offered in behalf of all the parties under the issues in said cause and to which no objections were made or exceptions taken by any of the parties; and said bill of exceptions number one is now, this 4th day of June, 1938, by the court duly

[fol. 39] approved, signed, sealed and ordered filed by the Clerk and made a part of the record in said cause. It is further ordered that the Clerk of this court, upon the request of the defendant, certify to said original bill of exceptions number one on appeal to the Supreme Court of Indiana, instead of a transcript thereof.

Aldo J. Simpson, Judge of Elkhart Circuit Court.

[fol. 40] In Circuit Court of Elkhart County

[Title omitted]

Praecipe for Transcript on Appeal—Filed June 2, 1938

To the Clerk of said Court:

You are hereby directed to prepare and certify to a complete transcript of the record in the above entitled cause for use on appeal to the Supreme Court of Indiana, including this praecipe.

Church & Chester, Thompson & Rabb, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 41] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 42-43] In Circuit Court of Elkhart County

[Title omitted]

Notice of Appeal

To Honorable Stanley Raymer, Prosecutor of 34th Judicial Circuit for the Elkhart Circuit Court:

You will take notice that the defendant, Gerrit W. Clason, in the above entitled cause, has taken an appeal to the Supreme Court from the judgment rendered in the Elkhart

Circuit Court on the 2nd day of June, 1938, in said cause in favor of the State and against the defendant.

Dated this 2nd day of June, 1938.

Gerrit W. Clason, Defendant.

Acknowledgment

I, Stanley Raymer, Prosecutor of the 34th Judicial Circuit for the Elkhart Circuit Court of Elkhart County, Indiana, hereby acknowledge service of notice of appeal in the above entitled cause of action this 2nd day of June, 1938.

Stanley A. Raymer, Prosecutor for the 34th Judicial Circuit.

Filed Jun. 17, 1938. Paul Stump, Clerk.

[fol. 44] In Supreme Court of Indiana

Docket Entries

1938, June, 17. Record, Assgt. of Errors In Term Bond, Notice Served below. Submitted under Rule 15.

1938, June 23. Appellants Brief & receipt for copy.

1938, June 23. Appellant's request for oral argument.

1938, June 30. Appellants petition to correct misprints in Appellants Brief, notice & proof of service—Granted.

1938, July 23. Appellees Brief 9 & receipt for copy.

1938, Aug. 8. Appellants reply Brief 9 & receipt for copy.

1938, Oct. 10. Oral argument set for Oct. 17, 1938 at 10:00 A.M. 1 hour each side.

1938, Nov. 1. 139th Day May Term—Affirmed, Shake J.

1938, No. 19. Appellant's petition for rehearing, brief (9) & receipt for copies.

1938, Nov. 29. Appellants pet. for rehearing, Denied.

1938, Nov. 30. Appellant's petition for order allowing appeal to United States Supreme Court, asst. of Errors & prayer for reversal.

1938, Nov. 30. Order allowing appeal, and approving surety on bond and staying certification of opinion to trial court.

1938, Nov. 30. Bond of appellant on appeal to U. S. Supreme Court.

1938, Nov. 30. Appellants statement as to jurisdiction.

1938, Nov. 30. Notice of appeal to U. S. Supreme Court & proof of Service.

1938, Nov. 30. Citation of appellees & Notice.
1938, Nov. 30. Praecipe for transcript of record & notice.
1938, Nov. 30. Appellants statement of points to be relied upon.
1938, Dec. 2. Appendix of opinions and statute.
1938, Dec. 7. Appellees praecipe for additional transcript of record.

[fol. 45] IN SUPREME COURT OF INDIANA

Elkhart C. C. #27099

GERRIT W. CLASON

vs.

STATE OF INDIANA

JUDGMENT—November 1, 1938

Come now the parties by counsel and the Court, being advised in the premises, affirms the judgment of the court below with the following opinion pronounced by Shake, J. (H. I.)

It is therefore considered by the Court that the judgment of the court below in the above cause be in all things affirmed at the cost of appellant.

And it is further considered and adjudged by the Court that the appellee recover of the appellant the sum of $— for — costs in this behalf expended.

(Signed) James P. Hughes, Chief Justice.

[fol. 46] IN SUPREME COURT OF INDIANA

No. 27099

GERRIT W. CLASON, Appellant,

v.

STATE OF INDIANA, Appellee

Appeal from Circuit Court, Elkhart County

OPINION—Filed November 1, 1938

SHAKE, J.:

The appellant was charged by affidavit with unlawfully transporting a dead animal, not slaughtered and intended for human food, over a highway of this state to a disposal

plant located in Illinois, without being licensed as provided in chapter 278, Acts 1937, Burns' Ann. St. 1933, §§ 16-817 to 16-837 (Pocket Supp.). There was a trial by the court, the evidence being stipulated, and the appellant was found guilty and fined. He has appealed, assigning that the affidavit upon which he was prosecuted did not charge a public offense and that the court erred in denying his motion in arrest and in denying him a new trial.

This is the second appeal of this cause, the former case being reported as State v. Clason, Ind. Sup. (1938) 12 N. E. (2d) 750, 13 N. E. (2d) 307. That appeal involved only [fol. 47] the sufficiency of the charge. This court held the affidavit good and, on the authority of the former opinion, we now hold that there was no error in overruling appellant's motion to quash the affidavit filed subsequent to the first appeal.

It is conceded by the appellant that "insofar as this statute prescribes the kind of vehicles and the manner in which (but not the places to which) carcasses may be transported over the highways of this State, the statute appears to be within the scope of the police power; does not conflict with federal legislation; and bears a reasonable relation to the declared purpose of the enactment, viz., the limitation of the spread of disease, the protection of the public health, and the prevention of nuisances".

A number of propositions are presented and urged in support of the appellant's contentions, but we believe that they may be fairly summarized as follows: That since the statute authorizes the transportation of carcasses of dead animals over the highways of the state but limits such transportation to carriers of licensed operators of reduction plants in this state, the effect of the statute is to prohibit interstate commerce of such dead animals in violation of article 1, section 8, clause 3 of the Constitution of the United States. Appellant's position may be illustrated by this hypothetical situation: Since a person operating a vehicle constructed and equipped as required by the act, may obtain a license for its use in transporting dead animals to a licensed reduction plant in Indiana, but may not employ a like vehicle, possessing the same sanitary features, to transport dead animals across the boundaries of this state, the statute must be construed as a prohibitory and not merely as regulatory.

[fol. 48] It is important, we think, to keep constantly in mind the nature of the objects with which the statute deals. That the carcasses of large animals not killed for human consumption are inherently dangerous to the public health and liable to become nuisances, is clearly disclosed by the stipulation upon which the case was tried below. It was there shown that a majority of such animals die from contagious or infectious diseases, many of which are readily transmissible to human beings; that in the case of such dead animals decomposition starts within five hours after death, and that if such carcasses are not disposed of within twenty-four hours they will produce noxious odors over a wide area; that contagious and infectious diseases may be communicated to man and beasts by the transportation of the bodies of such dead animals upon the highways, but that the dangers incident to such transportation may be minimized by the proper cleansing and disinfecting of the vehicles employed for that purpose. It was further stipulated that there are now thirty-eight disposal plants in the state of Indiana, licensed and operating under the act; that these plants are so distributed and equipped as to dispose of the bodies of all large animals not intended and slaughtered for human food, as die within the limits of the state, and that the state of Indiana has a state veterinarian and facilities for the enforcement of the act. One provision of the statute provides that: After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in [fol. 49] such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies". Acts 1937, Ch. 278, § 11 (e), Burns' 1933, § 16-827 (e) (Pocket Supp.).

It seems clear, therefore, that the statute under consideration is not dealing with an article of commerce as that term is ordinarily used and understood. And while it may be conceded that the bodies of dead animals have a commercial value, we do not think that it is to be doubted that the state of Indiana might, by appropriate legislation, have specifically provided that there should be no commerce in

such bodies, but that the same should be destroyed without recompense to the owners thereof. In the case of City of Indianapolis v. Ryan (1937) 212 Ind. 447, 7 N. E. (2d) 974, this court held that it was within the proper function of the Legislature to regulate the disposition of garbage and to provide for its destruction, notwithstanding its intrinsic value. We think it equally clear that it would be within the purview of our General Assembly to prohibit the importation into this state of the carcasses of large dead animals not slaughtered for human consumption. In the case of Bowman v. Chicago & Northwestern Ry. Co. (1888) 125 U. S. 465, 31 L. Ed. 700, the Supreme Court of the United States made this observation relative to the powers of the state to impose quarantine provisions: "Doubtless the States have power to provide by law suitable measures to prevent the introduction into the States of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence, and death, such as [fol. 50] rags or other substances infected with the germs of yellow fever or the virus of smallpox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution".

But one question remains, and that is whether the state, in the exercise of its police power, may prohibit the interstate transportation of dead animals by a plan that allows intrastate transportation by its licensees under such circumstances that may result in the profitable handling of such articles within the State. As we have already suggested, it is not to be doubted but that the state might have set up and operated its own disposal plants. If this had been done, the effect would have been to divest such dead bodies of every semblance of merchantable property. Instead of adopting this means of coping with the problem, the General Assembly has authorized the plan embraced in the statute. It was apparently found that by licensing carriers and disposal plants, by-products might be salvaged

sufficient to render the business profitable to the licensees, thereby relieving the state of the burden of dealing directly with the problem. The principles of constitutional law that protect interstate commerce are no more basic or sacred than those that protect private property from confiscation. It follows, a fortiori, that the inherent police power of the [fol. 51] state, in dealing with a subject of this character, is sufficient to divest the carcasses of dead animals of their attributes of commerce. And it may be pointed out that if the statute under consideration was construed as severable in character, so that the regulatory features might be preserved, and interstate traffic permitted, as appellant contends, this construction might result in destroying the whole plan. If a substantial percentage of these carcasses were exported from the state through the operation of interstate commerce, those remaining within the state might be so reduced in quantity that it would no longer be profitable for licensees to operate their plants. The state would then be confronted with the problem of incurring great expense to dispose of those remaining, and this expense might well be increased by a reduction in the return from the by-products recoverable.

We have already quoted from a section of the act which requires that vehicles and the feet of draught animals used in transporting carcasses to the licensed disposal plants of the state, shall be throughly cleansed and disinfected after each delivery and before again going upon the highways of the state. It must be presumed that the state has ample facilities for the enforcement of this provision. If the transportation of dead animals from points within this state to places beyond its boundaries is to be permitted, it is conceivable that vehicles used for that purpose will spread disease in this state upon their return. It is no answer to this problem to say that the state might impose like standards for vehicles used in interstate transportation as are required by the terms of the act. The impracticability of adequate inspection would defeat the ends sought and [fol. 52] would place upon the state veterinarian, or some other public agency, the burden of constantly policing every one of the many public highways leading into the state. The provisions of the act against interstate transportation may therefore be considered as in the nature of a quarantine against the bringing into this state of contaminated vehicles that have been used in the transportation of dead animals.

We believe that such a quarantine is justifiable and reasonable; that it bears a direct relationship to the objectives sought by the act considered as a whole, and that any interference with interstate commerce is merely incidental.

The judgment of the Elkhart Circuit Court is affirmed.

[fols. 53-54] [File endorsement omitted.]

1938, Nov. 29, Reh. Denied.

[fol. 55] IN SUPREME COURT OF INDIANA

[Title omitted]

APPELLANT'S PETITION FOR REHEARING—Filed November 19, 1938

Gerrit W. Clason, appellant in the above entitled cause, respectfully petitions the Court for a rehearing thereof, and that upon such rehearing the decision and opinion of this Court rendered November 1, 1938, be set aside, and the judgment appealed from be reversed, for each of the following reasons, to wit:

1. This Court erred in pronouncing and deciding that Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana was not in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, for the reason that the intent and necessary effect of said Act is directly and not incidentally to prohibit interstate commerce in the bodies of dead animals not slaughtered for human food.

2. This Court erred in pronouncing and deciding that Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana was valid as a regulation and not invalid as a prohibition of interstate commerce in the bodies of dead animals not slaughtered for food.

3. This Court erred in pronouncing and deciding that Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana was valid as a quarantine and not [fol. 56] invalid as a discriminatory prohibition of interstate commerce in the bodies of dead animals not slaughtered for food.

4. This Court erred in not pronouncing and deciding that Chapter 278 of the Acts of the 1937 General Assembly of

the State of Indiana was invalid as violative of Article I, Section 8, Clause 3 of the Constitution of the United States for the reason that the transportation and sale of dead bodies of animals not slaughtered for food, being legitimate articles of commerce and not deprived of that character by said Chapter 278, cannot lawfully be prohibited by said Act outside of the State of Indiana when permitted by said Act inside of the State of Indiana.

5. This Court erred in pronouncing and deciding that the affidavit not quashed by the lower court, stated facts charging a public offense.

6. This Court erred in pronouncing and deciding that the lower court did not err in overruling appellant's motion to quash the affidavit, being the motion filed subsequent to the first appeal taken in this matter.

7. This Court erred in pronouncing and deciding that the lower court did not err in overruling appellant's motion in arrest.

8. This Court erred in pronouncing and deciding that the lower court did not err in overruling appellant's motion for a new trial.

Wherefore, appellant prays for a rehearing, and that upon rehearing the decision and opinion of this Court rendered November 1, 1938, be set aside, and the judgment of the lower court be reversed; and for all other proper relief.

Wm. H. Thompson, Albert L. Rabb, Attorneys for Appellant.

November 19, 1938.

[fol. 57] 11/29/38, Denied, Tremain, C. J.

[File endorsement omitted.]

[fol. 58] IN SUPREME COURT OF INDIANA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—November 29, 1938

Come now the parties by counsel, and the Court, being advised in the premises, denies the appellant's petition for a rehearing, heretofore filed herein.

(Signed) George L. Tremain, Chief Justice.

[fol. 59] IN SUPREME COURT OF INDIANA

EXCERPTS FROM APPELLANT'S BRIEF

Propositions and Authorities

First Assigned Error

The Elkhart Circuit Court erred in overruling appellant's first motion to quash the affidavit herein.

Proposition I

The gist of the offense charged is the transportation in interstate commerce of the carcass of a dead animal not intended for human food; in violation of the Dead Animal Disposal Law.

Chapter 278 (section 11-2), Acts 1937.

Proposition II

Appellant could not, by an compliance with the terms of Chapter 278, Acts 1937, have obtained a license for and engaged in the interstate transportation of carcasses.

Chapter 278 (Section 11-a), Acts 1937;
Stipulation No. 10 (Tr., p. 39).

Proposition III

The Dead Animal Disposal Law is of a dual nature, containing both regulatory and prohibitory provisions.

Point 1

The statute regulates and sanctions intrastate commerce in carcasses.

Chapter 278, Acts 1937; Title; Sections 1, 4, 6 and following.

Point 2

The statute extinguishes and prohibits interstate commerce in carcasses.

Chapter 278, Acts 1937; Section 11-a; 11-b.

[fol. 60] Proposition IV

The transportation of and traffic in carcasses of dead animals is a subject fairly within the police power of the State of Indiana so long as the regulatory statute is not aimed at interstate commerce; does not impose a direct

burden upon it or discriminate against it; bears a reasonable relation to the legitimate purpose of the enactment; and does not conflict with any congressional act.

Compare Hygrade Provision Co. v. Sherman, 266 U. S. 497.

Point 1

Insofar as Chapter 278, Acts 1937, purports to regulate (as distinguished from the prohibition of) traffic in carcasses, it appears to be within the scope of the police power of this State, does not conflict with federal legislation, and bears a reasonable relation to its declared purposes, viz., the limitation of the spread of diseases, the protection of the public health, and the prevention of nuisances.

Proposition V

The prohibition of interstate commerce in carcasses of dead animals, intrastate commerce therein being permitted, is not regulation of but is discrimination against interstate commerce to the point of extinction, in violation of the commerce clause of the Constitution of the United States.

Minnesota v. Barber, 136 U. S. 313, 34 L. ed. 455;
Brimmer v. Rebman, 138 U. S. 78, 34 L. ed. 862;
Voight v. Wright, 141 U. S. 62; 35 L. ed. 638;
West v. Kansas Natural Gas Co., 221 U. S. 229, 55 L. ed. 716;
[fol. 61] Pennsylvania v. West Virginia, 262 U. S. 553, 67 L. ed. 1117;
Foster v. Haydel, 278 U. S. 1, 73 L. ed. 147;
Vandalia Coal Co. v. Special Coal & Food Commission, 268 Fed. 572 (Ind.);
Ohio Collieries Co. v. Stuart, 290 Fed. 1005;
State ex rel. Corwin v. The Indiana etc. Mining Co., 120 Ind. 575;
Manufacturers Gas etc. Co. v. Indiana Natural Gas Co., 155 Ind. 545;
Jamieson v. The Indiana etc. Co., 128 Ind. 555.

Point 1

The State may not, under cover of exerting its police powers, substantially prohibit or burden interstate commerce.

Hannibal etc. Co. v. Husen, 95 U. S. 465, 24 L. ed. 527.

Point 2

Discrimination against interstate commerce in a commodity intrastate commerce in which is sanctioned, is in violation of the commerce clause and is not a justifiable exertion of the police powers of this State.

Minnesota v. Barber, 136 U. S. 313, 34 L. ed. 455;
Brimmer v. Rebman, 138 U. S. 78, 34 L. ed. 862;
Voight v. Wright, 141 U. S. 62, 35 L. ed. 638;
West v. Kansas Natural Gas Co., 221 U. S. 229, 55 L. ed. 716;
Jamieson v. Indiana Natural Gas Co., 128 Ind. 555;
State ex rel. Corwin v. The Indiana etc. Mining Co., 120 Ind. 555.

[fol. 62] Point 3

The prohibition of interstate commerce is not incidental to regulation of intrastate commerce.

West v. Kansas Natural Gas Co., 221 U. S. 229, 55 L. Ed. 716.

4

The prohibition of interstate commerce in carcasses of dead animals has no reasonable relation to the regulation of intrastate traffic therein: Every declared purpose of Chapter 278, Acts 1937, viz., the limitation of the spread of disease, the protection of the public health, and the prevention of nuisances, could be accomplished by identical regulatory provisions for interstate and intrastate commerce alike.

Point 5

This State has no power to prevent privately owned articles of trade, such as carcasses of dead animals, from being transported and sold in interstate commerce; the rights of private ownership entitling the owner to the protection of the commerce clause of the Constitution.

West v. Kansas Natural Gas Co., 221 U. S. 229, 55 L. ed. 716;
Pennsylvania v. West Virginia, 262 U. S. 553, 67 L. ed. 1117;
State ex rel Corwin v. The Indiana etc. Mining Co., 120 Ind. 575, 578;

Manufacturers Gas etc. Co. v. Indiana Natural Gas Co., 155 Ind. 545, 547;
Jamieson v. The Indiana etc. Co., 128 Ind. 555, 575, 589.

[fol. 63] **Proposition VI**

The provisions of Chapter 278, Acts 1937, prohibiting interstate commerce, being separable, may be declared invalid without prejudice to its valid regulatory provisions.
Section 20, Chapter 278, Acts 1937.

Point 1

Elimination of these provisions prohibiting interstate commerce will leave a valid, and effective regulatory measure applying to all commerce—interstate and intrastate—alike, and therefore not offending the commerce clause of the Constitution.

Second Assigned Error

The Elkhart Circuit Court erred in overruling appellant's second motion to quash the affidavit herein.

For brevity, appellant here incorporates the Propositions, Points, and Authorities heretofore cited under the First Assigned Error, as fully as if here set out at length.

Third Assigned Error

The Elkhart Circuit Court erred in overruling appellant's motion in arrest of judgment.

For brevity, appellant here incorporates the Propositions, Points, and Authorities heretofore cited under the First Assigned Error, as fully as if here set out at length.

Fourth Assigned Error

The Elkhart Circuit Court erred in overruling appellant's motion for a new trial.

As to each of the two grounds of appellant's motion for new trial, viz: (1) The decision of the court is contrary to law, and (2) the decision of the court is not sustained by sufficient evidence. Appellant, for brevity, here incorporates the Propositions, Points, and Authorities, heretofore cited [fol. 64] under the First Assigned Error, as fully as if here set out at length.

[fol. 65] Argument

Appellant was charged in the lower court with a misdemeanor for violation of Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, in that on a specified date he, without a license thereunder, unlawfully transported over a named public highway in Elkhart County, Indiana, to a disposal plant located in the State of Illinois, a dead horse which had not been slaughtered for human food.

Pursuant to the direction of this Court upon the first appeal of this cause, the lower court overruled a motion to quash the affidavit and required appellant to plead to the charge. He pleaded not guilty, waived a jury, and the case was tried by the court upon a stipulation of facts. From a judgment imposing a fine, appellant appeals; and by assigning as error the action of the lower court in overruling motions to quash, in arrest of judgment, and for a new trial, he questions the constitutionality of the statute upon which the affidavit is based.

The gist of the offense charged was unlicensed transportation of a carcass over Indiana highways to a disposal plant in Illinois. There was no charge that the vehicle used or the other circumstances of the transportation were unlawful. There was no proof that the vehicle used or the other circumstances of the transportation did or in any manner could injure the public health, tend to spread disease, or create a nuisance. The evidence was that by the terms of said statute, appellant could not have obtained a license for transportation of a carcass into any other State.

The single question of law presented by the appeal is this:

Is Chapter 278 of Acts 1937 invalid to the extent it is a prohibition and not a regulation of interstate commerce [fol. 66] in legitimate articles of commerce in which intrastate commerce is sanctioned by the same Act; contrary to Article 1, Section 8, Clause 3, of the Constitution of the United States?

[fol. 67] In Supreme Court of Indiana

[Title omitted]

Minute Entry—November 30, 1938

Comes now the appellant by counsel and files a petition for order allowing appeal to the United States Supreme

Court, the assignment of errors and prayer for reversal, the order allowing appeal and approval of surety on bond, and staying certification of opinion to trial Court; the bond of appellant on appeal to the United States Supreme Court, appellant's statement as to jurisdiction, notice of appeal to the United States Supreme Court, and proof of service thereof, the citation of appellees and notice; the praecipe for the transcript of the record and notice, and appellant's statement of points to be relied upon, which papers are in the words and figures following, to-wit: (H. I.).

(Signed) George L. Tremain, Chief Justice.

[fol. 68] IN SUPREME COURT OF INDIANA

[Title omitted]

Petition for Appeal, Assignment of Error, Prayer for Reversal—Filed November 30, 1938

To the Honorable, the Chief Justice of the Supreme Court of Indiana:

PETITION FOR APPEAL

Gerrit W. Clason, respectfully petitioning, shows:

That he is the appellant in the above entitled cause; that the Supreme Court of Indiana rendered a final decision in said cause on the 29th day of November, 1938; that said Supreme Court of Indiana is the highest court of said State in which a decision in this suit can be had; that in said cause there is drawn into question the validity of a statute of the State of Indiana, viz. Chapter 278 of the Acts of 1937, on the ground that said statute is repugnant to the Constitution of the United States, and the decision is in favor of its validity; [fol. 69] and that petitioner is and considers himself aggrieved by said final decision.

Wherefore, petitioner prays that an appeal be allowed from the Supreme Court of Indiana to the Supreme Court of the United States and that the appeal bond herewith tendered by petitioner be approved.

ASSIGNMENT OF ERRORS

Gerrit W. Clason, petitioner herein and appellant in the above entitled cause, and as appellant on appeal to the Su-

preme Court of the United States from the final decision and judgment heretofore entered herein on November 29th, 1938, assigns as error that:

1. The Supreme Court of Indiana erred in pronouncing and deciding that Chapter 278 of the Acts of 1937 General Assembly of the State of Indiana was not in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, for the reason that the intent and necessary effect of said Act is directly and not incidentally to prohibit interstate commerce in the bodies of dead animals not slaughtered for human food.

2. The Supreme Court of Indiana erred in pronouncing and deciding that Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana was valid as a regulation and not invalid as a prohibition of interstate commerce in the bodies of dead animals not slaughtered for food.

3. The Supreme Court of Indiana erred in pronouncing and deciding that Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana was valid as a quarantine and not invalid as a discriminatory prohibition [fol. 70] of interstate commerce in the bodies of dead animals not slaughtered for food.

4. The Supreme Court of Indiana erred in not pronouncing and deciding that Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana was invalid as violative of Article I, Section 8, Clause 3 of the Constitution of the United States for the reason that the transportation and sale of dead bodies of animals not slaughtered for food, being legitimate articles of commerce and not deprived of that character by said Chapter 278, cannot lawfully be prohibited by said Act outside of the State of Indiana when permitted by said Act inside of the State of Indiana.

5. The Supreme Court of Indiana erred in pronouncing and deciding that the affidavit not quashed by the lower court, viz: the Elkhart Circuit Court, stated facts charging a public offense.

6. The Supreme Court of Indiana erred in pronouncing and deciding that the lower court did not err in overruling appellant's motion to quash the affidavit, being the motion filed subsequent to the first appeal taken in this matter.

7. The Supreme Court of Indiana erred in pronouncing and deciding that the lower court did not err in overruling appellant's motion in arrest.

8. The Supreme Court of Indiana erred in pronouncing and deciding that the lower court did not err in overruling appellant's motion for a new trial.

PRAYER FOR REVERSAL

For which errors and each of them said Gerrit W. Clason, as appellant on said appeal to the Supreme Court of the United States, prays that said judgment of the Supreme [fol. 71] Court of Indiana finally entered on November 29th, 1938, in the above entitled cause, be reversed, and that a judgment be ordered in favor of appellant, and for costs.

Dated this day of 30th day of November, 1938.

Wm. H. Thompson, Albert L. Rabb, Attorneys for Appellant, 1350 Consolidated Building, Indianapolis, Indiana.

[File endorsement omitted.]

[fol. 72] IN THE SUPREME COURT OF INDIANA

[Title Omitted]

ORDER ALLOWING APPEAL—Filed November 30, 1938.

The petition of Gerrit W. Clason, appellant in the above entitled cause, for an appeal in said cause from the final judgment rendered November 29th, 1938, by the Supreme Court of Indiana, to the Supreme Court of the United States, having heretofore been filed with the Clerk of this Court and presented herein, and accompanied by his assignment of errors, prayer for reversal of said judgment, and by his appeal bond and a statement as to jurisdiction, all as provided by the statutes and by the Rules of the Supreme Court of the United States, and the record in the cause having been considered and the decision therein to be appealed from constituting a final judgment of the highest court of the State in which a decision in said suit can be had, and it appearing that in this cause there is drawn into

question the validity of a statute (Chapter 278 Acts 1937) of the State of Indiana on the ground that it is repugnant to the Constitution of the United States, and said decision being in favor of the validity of such statute:

It is therefore ordered that an appeal be and hereby is allowed to the Supreme Court of the United States as prayed for in said petition, and the Clerk of the Supreme [fol. 73] Court of Indiana is hereby ordered and directed within forty days from this date to make and transmit to the Clerk of the Supreme Court of the United States under his hand and the seal of this Court, a true, full, and complete copy of all material parts of the record herein which shall be designed by praecipe or by stipulation of the parties or of their counsel herein, all in accordance with the applicable statutes and Rules of the Supreme Court of the United States.

It is further ordered that the bond of said Gerrit W. Clason as appellant in said appeal, in the sum of Five Hundred Dollars with American Surety Company of New York as surety thereon, is a good and sufficient bond that said appellant shall prosecute said appeal to effect and answer the judgment and costs if he fails to make his appeal good; and said bond and the surety thereon are now and hereby approved, and the mandate of this Court and certification of its opinion to the Elkhart Circuit Court are hereby stayed pending the final determination of said appeal.

Dated this 30th day of November 1938.

George L. Tremain, Chief Justice of the Supreme Court of Indiana.

[fol. 74] [File endorsement omitted.]

[fols. 75-79] Bond on appeal for $500.00, approved and filed November 30, 1938, omitted in printing.

[fols. 80-81] Citation, in usual form, showing service on Omer Stokes Jackson, filed November 30, 1938, omitted in printing.

[fol. 82] IN SUPREME COURT OF INDIANA

[Title omitted.]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed November 30, 1938.

To the Honorable Paul Stump, Clerk of the Supreme Court of Indiana:

Please include the following papers in the transcript of the record of the above entitled cause to be transmitted to the Supreme Court of the United States pursuant to allowance of appeal thereto in this cause. Also indicate as to all papers filed in your office the date of the filing of the same.

1. The transcript of the record filed in your office including:

(a) The filing of the affidavit;
(b) The affidavit;
(c) The indorsement thereon;
(d) The order for bench warrant;
(e) Defendant's appearance;
(f) The filing of the motion to quash;
(g) The motion to quash;
(h) The memorandum thereon;
(i) The ruling sustaining such motion;
(j) The prayer for appeal;
(k) Notice of reversal, with opinion dated February 7, 1938;
[fol. 83] (l) Notice of denial of petition for rehearing on March 10, 1938, with opinion;
(m) Additional appearances;
(n) Order overruling motion to quash;
(o) New motion to quash;
(p) Order overruling same;
(q) Plea of not guilty;
(r) Submission and stipulation of evidence;
(s) Finding of court;
(t) Motion in arrest of judgment;
(u) Order overruling same;
(v) Motion for new trial;
(w) Order overruling same;
(x) Final judgment;

(y) Prayer for appeal;
(z) Praecipe for transcript;
(aa) Clerk's certificate to transcript;
(bb) Assignment of errors;
(cc) Notice of appeal and acknowledgement.

2. The filing of the record in and submission to the Supreme Court of Indiana.

3. The decision, order, and opinion of affirmance rendered November 1, 1938.

4. The petition for rehearing, filed November 19, 1938.

5. The decision and order denying rehearing, rendered November 29th, 1938.

6. That part of Appellant's printed brief in the Supreme Court of Indiana specifying the points relied on for reversal; being that division entitled "Propositions and Au-[fol. 84] thorities" extending from page 16 to page 22 inclusive; and so much of that part of said brief entitled "Argument" as includes the caption "Argument" and the first literary paragraph on page 24 of said brief.

7. Petition for appeal to the Supreme Court of the United States, assignment of errors, and prayer for reversal.

8. Order allowing appeal and approving bond.

9. Citation and proof of service thereof.

10. Proof of service of appeal papers.

11. This praecipe for transcript.

12. Stipulation or order, if any, settling the record.

13. Your certificate as to the record.

14. Copy of the Dead Animal Disposal Act (Chapter 278 Acts 1937).

15. Statement as to jurisdiction of the Supreme Court of the United States filed with said petition for appeal, said statement to be separately certified to.

Wm. H. Thompson, Albert L. Rabb, Attorneys for Gerritt W. Clason.

Acknowledgement of Service

Receipt of a copy of the above praecipe for transcript of record is hereby acknowledged at Indianapolis, Indiana, this 30th day of November, 1938.

Omer Stokes Jackson, Attorney General of Indiana.
Rexell A. Boyd, Deputy Attorney General of Indiana.

[fols. 85-87] [File endorsement omitted.]

[fol. 88] IN SUPREME COURT OF INDIANA

[Title omitted]

APPELLEE'S PRAECIPE AND DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD—Filed December 7, 1938

To the Honorable Paul Stump, Clerk of the Supreme Court of Indiana:

[fol. 89] Pursuant to Section 2, Rule 10, of the Rules of the Supreme Court of the United States, appellee requests, that in addition to that part of the record heretofore requested by appellant to be made a part of the transcript of the record of this cause on appeal to the Supreme Court of the United States, that the following be likewise incorporated into such transcript:

1. That part of appellee's printed brief in the Supreme Court of Indiana specifying the points relied on to sustain the judgment of the Elkhart Circuit Court; the same being that division of the brief entitled "Propositions and Authorities," extending from page 4 to page 27, inclusive; and all of that part of said brief captioned, "Argument", extending from page 28 to page 38, inclusive.

Omer Stokes Jackson, Attorney General of Indiana; Rexell A. Boyd, Deputy Attorney General; Urban C. Stover, Deputy Attorney General, Attorneys for State of Indiana, Appellee.

Indianapolis, Indiana, December 7, 1938.

[fol. 90] The undersigned attorneys for appellant acknowledge the receipt of a copy of the foregoing designation of additional parts of the record which appellee desires to be included in the transcript on appeal to the Supreme Court of the United States.

Wm. H. Thompson, Albert L. Rabb, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 91] IN SUPREME COURT OF INDIANA

EXCERPTS FROM APPELLEE'S BRIEF

Propositions and Authorities

First Assigned Error

That the Elkhart Circuit Court erred in overruling the appellant's first motion to the affidavit herein.

Proposition I

The offense charged in the indictment is a public offense under the laws of the State of Indiana.

Chapter 278, Section 11 (a), Acts of 1937.

Point 1

The statute under which the affidavit is drawn defines the offense of hauling the bodies of large dead animals over the highways of this state by unlicensed persons. Such offense is charged in the affidavit herein in substantially the language of the statute:

"Sec. 11. (a) No person, except as herein provided, may haul or transport over the highways of the State of Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business."

Chapter 278, Sec. 11 (a), Acts of 1937.

Point 2

Each and all of the essential elements of the offense are alleged in the affidavit, the essential elements being that on the date named:

(a) the defendant hauled and transported,

(b) over a highway of the State of Indiana,

(c) the body of a dead animal not intended to be used for human food,

[fol. 92] (d) without obtaining a license to so haul, and

(e) did haul such dead animal to a disposal plant without the state.

Chapter 278, Sec. 11 (a), Acts of 1937; Tr., p. 6, 11. 1-19.

Proposition II

The purpose of Chapter 278, Acts of 1937, is to combat the spread of animal diseases, protect the health of the citizens and protect against danger, annoyances and nuisances arising from transportation and disposal of dead animals.

Point 1

The legislature in the enactment of Chapter 278 declares the policy and purpose of the act to be for the protection of the health of the citizens of the state.

"Section 1. Be it enacted by the general assembly of the State of Indiana, That it is hereby declared to be the public policy of the State of Indiana, acting through its general assembly, to control and regulate the transportation over the highways of this state and the disposal of the carcasses of dead animals, not slaughtered and intended for human food, to the end that the spread of animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be conserved and protected against dangers, annoyances and nuisances that might arise from such carcasses and from such transportation and disposal thereof, if the same be not required by law; and this act is designed to effectuate such purposes and public policy, through the exercise of the public (police) powers of the state. This act shall be liberally construed to effect such policy and to promote such objects."

[fol. 93] Chapter 278, Section 1, Acts of 1937.

Point 2

The provisions of the act limit transportation and disposal of the bodies of dead animals to holders of licenses for such purposes.

Chapter 278, Sec. 4 (a), Acts of 1937.

Point 3

Provision is made by the act for the disposal of dead animals by reduction in plants which must meet specifications prescribed to prevent spread of animal diseases and protect against dangers, annoyances and nuisances that may arise from the disposition of dead animals.

"Section 13. No disposal plant shall be deemed a suitable or sanitary place for disposing of the bodies of dead animals by any process of cooking or burning, unless it conforms to the following minimum specifications:

"Building:

"(a) The building must have four (4) walls complete and be provided with concrete or cement floors and with good drainage and be thoroughly sanitary in construction and maintainance (maintenance) and any sewage, drainage, or waste water of any kind, if of an offensive or obnoxious character or odor, detrimental to human, animal, agricultural or aquatic life, or that may constitute a public nuisance, shall not be permitted to escape therefrom until first treated as herein specified. All sewage, drainage, or waste water must first pass through a septic tank or a filter bed or covered settling pool, that will destroy all infection therein before passing therefrom and must not thereafter, at any time, empty or pass into any body of water, or any stream other than a running stream, or if emptying upon the ground, on the premises of said [fol. 94] plant, it must be absorbed by the soil and not be allowed to collect in open pools, or in any other manner so as to create a public nuisance.

"Equipment:

"(b) All such plants must be properly equipped and operated with steel tanks, enclosed dryers and cold water condensers, and on and after January 1, 1940, all bodies shall be reduced only by steam cooking in all plants operating in this state; except in emergencies, where burning may be permitted under regulations prescribed therefor by the state veterinarian.

"Tanks:

"(c) All tanks shall be airtight, except proper escapes for live steam, passing through the tanks during cooking which steam shall be condensed by use of cold water condensers. All such equipment shall be so construed (constructed) and maintained as to prevent any avoidable escape of odors into the air.

"Dry Rendering:

"(d) If a method of dry rendering is used, the heads and discharge doors of the vessels shall be of a type, using gaskets, with the doors drawn tight with bolts against such gaskets, and with packing boxes around the agitator shafts, and with vent for drawing off condensation, so constructed that the discharge shall be condensed by the use of cold water condensers of sufficient capacity, and with all thereof and every other part and opening in such equipment so constructed and maintained that there will be no avoidable escape of odors into the air.

"Disposal of Bodies—Time Limit—Exceptions:

"(e) All skinning and dismembering of bodies shall be done within such building and in such manner and shall [fol. 95] be so kept therein that no unnecessary annoyance shall be caused other persons by the conditions or unsightly appearance of such bodies or any parts and contents thereof; and all such bodies and all parts and contents thereof, shall be disposed of within twenty-four hours after delivery to such plant, by some method herein specified; except where rendered impossible by accident or other casualty preventing the operation of the plant, or except where some epidemic or act of God has caused more bodies to be accumulated than can be reasonably disposed of within such period of time by the continuous operation of the plant; in any of which events the plant shall be placed in operation as soon as possible and shall be operated continuously until all bodies are disposed of.

"Burning—Regulations:

"(f) In the event that any bodies, or parts thereof, are disposed of at such plant at any time by burning, the place and equipment used therefor shall be so located, con-

structed, arranged, maintained and operated that no avoidable odors will escape into the air; and all portions of such bodies not so entirely consumed, or that may be otherwise left undisposed of, shall be buried, as herein provided.

"Burial of Bodies—Duty:

"(g) In the event any bodies, or parts of bodies, are disposed of at said plant by burning the same, this shall be done in the same manner and period of time after receiving the same as is provided in this act such (for) such burial by the owner or person controlling such bodies prior to disposition thereof to any such plant.

"Nuisance Prohibited:

"(h) Such disposal plant shall be so situated, constructed and maintained and all operations therein so conducted at all times as not to create and continue unnecessarily [fol. 96] a public nuisance."

Chapter 278, Sec. 13, Acts of 1937.

Point 4

The disposal plants, and the operation thereof, including transportation of dead animals, are subject to inspection by the State Veterinary, and provision is made for the revocation of licenses upon non-compliance or evasion of the provisions of the act.

"State Veterinarian—Plants—Inspection of—Duty:

"Sec. 15. The state veterinarian, in person or by anyone authorized by him, shall inspect each plant and place licensed under this act at least once each year, and as often as he may deem necessary, and shall see that the licensees and all other persons comply with this act and conduct such business in conformity to this act and to the rules and regulations made and published by him pursuant thereto.

"Licenses—Suspension—Revocations—Grounds—Hearing—Procedure—Order—Appeal—Procedure:

"Sec. 16. The state veterinarian shall have the power to suspend for any fixed period, or to revoke the license held

by any licensee under this act, in the event such licensee shall violate and fail or refuse to obey any of the provisions of this act, or of the aforesaid rules and regulations; or in the event any licensee has been finally convicted of violating the laws of this state or of the United States in any manner affecting his conduct of said business; or in the event the state board of health shall certify in writing to the state veterinarian that any particular disposal plant is a menance to the public health, stating the charges specifically and definitely, in which case the hearing hereinafter provided for shall be held within thirty days after such charges of said board are so filed: Provided, however, [fol. 97] That before any license shall be suspended or revoked, the licensee shall be furnished with a written copy of the charges made against him and a hearing shall be had before the state veterinarian, or his authorized representative, at such time and place as he may fix, upon at least ten (10) days notice in writing to the licensee, to determine whether such license shall be suspended or revoked, which notice may be served either by registered mail, with return receipt, addressed to such licensee at the address shown in his application, or in the manner provided by law for the service of a summons. At the time and place fixed for the hearing, the licensee may appear in person and by counsel and such charges shall be deemed denied, without any answer thereto, unless the licensee desires to file an answer. The hearing shall be conducted in a summary manner, under such procedure as the rules and regulations may prescribe, and the state veterinarian, or his representative, shall receive and hear all the evidence and arguments offered by both parties and shall afford the licensee full opportunity to prevent all defenses available to him. When a hearing under this section is conducted before a representative of the state veterinarian, a written report and summary of the evidence at such hearing shall be made by him to the state veterinarian, with recommendations for action thereon. The state veterinarian, after such hearing before him, or after considering such report and summary of the evidence by his representative, shall render such decision and make such order in the premises as he may deem just, either dismissing the proceedings, or suspending the license for any fixed period, or revoking the license, which order shall be entered on his records

and written notice thereof shall be forthwith mailed by registered mail, with return receipt, to or served personally upon such licensee: and Provided, further, That any li- [fol. 98] censee affected adversely by any such decision and order of the state veterinarian may appeal therefrom to the Circuit Court or Superior Court of the county in which the plant is operated by the licensee, by filing in such court, at any time within thirty days after the day on which such decision and order is entered of record, a complaint to rehear such charges, which complaint shall name the state veterinarian as the sole defendant and shall be sufficient if it set out a copy of the charges and of any answer filed, upon which such hearing was conducted, and recite generally the conduct of such hearing and the decision and order made therein and pray for a new hearing and judgment by the court. The party appealing shall file at said time, with the complaint, a bond, with such surety or sureties as the clerk of such court may approve, conditioned to pay all costs if such appeal be decided adversely to the appellant, and he shall also cause a summons to be issued and served upon such state veterinarian, as in other civil actions. Either the attorney-general of the state, or the prosecuting attorney of said county or both, upon notice from the defendant, shall appear for such state veterinarian and defend such appeal. A motion to dismiss said appeal may be filed by the defendant, if it be not perfected in time, but no further pleadings shall be required, and the allegations of such complaint shall be deemed denied. The appellant shall have the right to inspect and obtain copies of any of the proceedings, papers and records in the office of said state veterinarian or under his control, applicable to or affecting such hearing and appeal. Such appeal shall be placed on the advance calendar and heard as soon as possible, and if the court be in vacation, the same may be heard at any time by the judge thereof, or by any other judge designated and appointed by him, in the same manner and with the same effect as if all such [fol. 99] proceedings were conducted in term. The court shall hear and conduct said appeal de novo, as a civil action, upon all the issues; and either party shall be entitled to offer all competent evidence relevant thereto, and the court shall be governed in all other respects by the procedure

and rules governing the trial of civil causes; except that such appeal shall be tried and decided solely by the court, and either party may have a change of judge, but there shall be no change of venue from the county. The court shall make a general finding and render judgment thereon and shall have the power to reverse, affirm, or modify, in whole or in part, the decision and order appealed from, and certified copy of such judgment, when final, shall be filed with said state veterinarian, who shall enter the same of record and in all things comply therewith. Either party to such proceedings may appeal from the decision and judgment of such court to the Appellate Court of Indiana, as in other civil causes, and such appeal shall operate as a stay of such judgment until finally determined."

Chapter 278, Secs. 15 and 16, Acts of 1937.

Proposition III

The provisions of the act prohibit the unregulated hauling of the bodies of dead animals over the highways of the state, either in interstate or intrastate transportation, and to guard against all the potential dangers of such transportation the state keeps complete control for sanitary purposes of all vehicles permitted upon its highways. The hauling of such dead bodies is only permitted in licensed vehicles to licensed plants, both of which are at all times subject to inspection and regulation to lessen the hazards of disease and the inconveniences occasioned by the disposal of such bodies.

[fol. 100]

Point 1

All vehicles used for transporting dead animals are required to meet specifications to lessen the hazard of spreading an animal disease over the route of the hauling.

Chapter 278, Sec. 11 (c) and (d), Acts of 1937.

Point 2

All vehicles are required to be cleaned and disinfected by prescribed solutions at the disposal plant of delivery after each trip.

Chapter 278, Sec. 11 (c), Acts of 1937.

Point 3

All deliveries of dead animals must be by shortest route to disposal plant, and all possibilities of spreading infec-

tion or creating a nuisance by such hauling are prohibited by the act.

Chapter 278, Sec. 11 (f), Acts of 1937.

Proposition IV

All presumptions must be indulged in favor of the constitutionality of a statute. This presumption prevails when the question of constitutionality of a legislative enactment is raised and is refuted only when it is made to appear clearly and plainly that the statute violates some provision of the constitution. The attack herein must necessarily show that there is a violation of Article I, Section 8, Clause 3, of the Federal Constitution by a direct burden upon interstate commerce as determined by the judicial interpretations of such article and section.

Point 1

[fol. 101] In determining the constitutionality of a statute the courts are governed by the presumption of validity of the statute in question.

Levy v. State, 161 Ind. 251;
State v. Gerhardt, 145 Ind. 439;
Robinson v. Schenk, 102 Ind. 307;
Overshiner v. State, 156 Ind. 187, 188;
Ex Parte Sweeney, 126 Ind. 583;
Ellwanger v. State, 203 Ind. 307.

Point 2

The Supreme Court when considering an appeal, wherein the question of the constitutionality of a statute is raised will, in such doubtful cases, construe the statute's provisions so as to sustain and not defeat the law, and the doubt will be solved in favor of the constitutionality of the statute.

Harp v. Tappy, 91 Ind. 102;
Hovey v. State, ex rel. Carson, 119 Ind. 395;
Jamieson v. Indiana Natural Gas & Oil Co., 128 Ind. 555;
State v. Gerhardt, 145 Ind. 439.

Point 3

Courts will not declare an enactment of the legislature unconstitutional unless it clearly appears that some pro-

vision of the act contravenes some provision of the constitution.

Overshiner v. State, 156 Ind. 187, 188;
Ex Parte Sweeney, 126 Ind. 583;
Weisenberger v. State, 202 Ind. 424;
O'Gorman and Young, Inc., v. Hartford Fire Insurance Company, 282 U. S. 251, Par. 3 and 4;
DeMoines v. Manhattan Oil Co., 193 Iowa 1096.

[fol. 102] Point 4

Chapter 278, Acts of 1937, does not purport to be a regulation of interstate commerce, but by its title and provisions is an exercise of the police power to prevent the spread of disease and to obviate the nuisances occasioned by the necessary disposition of the bodies of dead animals which the statute by its provisions recognizes to be articles possessed of noxious and deleterious qualities.

Chapter 278, Sec. 1, Acts of 1937.

Point 5

The evidence introduced in this cause conclusively shows that the bodies of dead animals are usually a source of infectious animal diseases and harmful in character to the health, property and welfare of the citizens of this state.

Tr., p. 37, l. 7, p. 39, l. 11.

Proposition V

The police power of the state is the sole vestige of power within the state which enables the state to protect the welfare, health, morals, property, etc., of its citizens. When the declared purpose of legislative enactments of the police power is to effectuate such results, the courts, in passing upon the constitutional validity of enactments under such police power do not substitute their will for those of the legislators, but look to the validity of the purpose for which the power is exercised.

Point 1

The police power of the state is the law of necessity and permits the state to prohibit any activity which threatens the health, morals, safety, welfare or peace of society. The power of the state over all parties within its jurisdiction [fol. 103] to control and regulate their activities or property

for the preservation of the general health, welfare, peace, etc., is plenary and inherent.

Walker v. Jameson, 140 Ind. 591;
Indianapolis v. Ryan, 7 N. E. (2) 974;
Jansen Farms, Inc., v. City of Indianapolis, 202 Ind. 138;
Levy v. State, 161 Ind. 251, 255;
Kidd v. Pearson, 128 U. S. 1;
New York, etc., R. R. v. New York, 165 U. S. 628;
Hennington v. Georgeo, 163 U. S. 299, 317;
Hale v. Lawrence, 21 N. J. Law 714;
Town of Lake View v. Rose Hill Cemetery Co., 70 Ill. 191;
Thorpe v. Rutland, etc., R. R. Co., 27 N. E. 140;
Tiedeman, Limitation of Police Power, Sec. 1.

Point 2

A statute relating to a subject within the police power should be construed, if possible so to do, so as to uphold it and to effectuate its manifest purpose in averting public nuisances and in promoting the public interests and welfare and in remedying the evil aimed at, and the courts will not substitute their views for that of the legislative body as to the propriety of the statute.

Hunt v. State, 195 Ind. 585, 587, 588; 146 N. E. 329;
Townsend v. State, 147 Ind. 624, 626, 635;
Levy v. State, 161 Ind. 251;
Block v. Hirsh, 256 U. S. 135;
New York, etc., R. R. v. New York, 165 U. S. 628.

Point 3

While not conclusive upon the courts in interpreting the purpose or meaning of a statute, a declaration thereof by the legislature, stated as a preamble to a statute, is persuasive and may be considered in such interpretation, along [fol. 104] with the objects contemplated, the evils designed to be corrected and the remedy provided.

Huff v. Fetch, 194 Ind. 570, 576;
Hanly v. Sims, 175 Ind. 345, 360;
59 C. J., Statutes, Sec. 598.

Point 4

The statute here in question was clearly enacted, under the state's police power, to regulate effectually a probable

nuisance in the use of the public highways of the state in transporting the bodies of large animals that have died of disease, so that vehicles used for that purpose should always be under the direct supervision of the state veterinarian and so cleansed and disinfected after each such use as to avoid the creation of a nuisance offensive to public health and welfare.

Even interstate commerce must yield to such exercise of the police power, vested solely in the states, when it is reasonably probable that the dominant public welfare so requires, and the courts will presume that the legislature was actuated and guided, in enacting a statute of this kind, by motives to conserve such public welfare, unless such presumption is clearly refuted by a consideration of all the provisions of the statute; which is not so refuted or manifest in this instance.

Smith v. City of New Albany, 175 Ind. 279;
Walker v. Jameson, 140 Ind. 591, 596, 602;
City of Indianapolis v. Ryan (Ind. Sup.), 7 N. E. 2d. 974;
Western Union Tel. Co. v. Pendleton, 95 Ind. 12, 13, 17; Jd. reversed, 122 U. S. 345, 30 L. ed. 1187, 1190;
Cincinnati, etc., R. Co. v. City of Connersville, 170 Ind. 316, 321, 322; Jd. affirmed, 218 U. S. 336, 54 L. ed. 1060, 1064;
[fol. 105] Weisenberger v. State, 202 Ind. 424, 428, 432;
McSween v. State Live Stock San. Board (Fla.), 65 A. L. R., 508, n. 528, 543;
Valley Spring Hog Ranch Co. v. Plagman, 282 Mo. 1, 15 A. L. R. 266;
Wheeler v. City of Boston, 233 Mass. 275, 15 A. L. R. 275;
Pantlind v. City of Grand Rapids, 210 Mich. 18, 15 A. L. R. 280, n. 289;
Gardner v. Dallas, 81 F. (2d) 425;
Reduction Co. v. Sanitary Works, 199 U. S. 318;
Gardner v. Michigan, 199 U. S. 325;
National Fertilizer Co. v. Lambert, et al., 48 Fed. 458;
Alpers v. San Francisco, 32 Fed. 503;
Authorities under Point 6, infra.

Point 5

Interstate commerce in property of the kind here in issue is not an absolute right under the Federal Constitution, but is always subject to such reasonable exercise of the police power of any state, relative to the instrumentalities of such commerce, as the legislature may determine to be essential to protect and effectuate the public interests, health and welfare of that state, by means of such regulations, applied to such traffic, in common with intrastate traffic, through adequate control, inspection and cleansing of all vehicles used in all kinds of such transportation, as will best effectuate and promote such objects. Particularly is this true where Congress has not enacted any statute upon such subject.

Smith v. St. Louis & S. W. R. Co., 181 U. S. 248, 45 L. ed. 847, 849, 851;

Oregon-Washington R. & N. Co. v. Washington, 270 U. S. 87, 70 L. ed. 482, 485, 488;

Vandalia R. Co. v. Railroad Com., 182 Ind. 382, 386, 390;

[fol. 106] Vandalia R. Co. v. Public Service Com., 242 U. S. 255, 61 L. ed. 276;

Railroad Com. v. Grand Trunk W. R. Co., 179 Ind. 255, 258, 263;

Hartford, etc., Co. v. People of State of Illinois, 298 U. S. 155, 80 L. ed. 1099;

2 Am. Jur., Animals, Secs. 157 to 160;

3 C. J. S., Animals, Secs. 51 to 55.

Point 6

While an absolute and indefeasible right to any kind of property may exist as between individuals, no such absolute right exists in any instance (except as to fair compensation for property taken or damaged in certain instances) as between any owner or claimant and the state, or other governmental units.

Under the police power, the state may deprive an owner of any property, often even without any compensation therefor, where essential to the public welfare; and all control and use of any property by an owner thereof; or his agent, is impressed with such dominant police power of the state at all times and places.

No absolute property right exists in the bodies of dead animals, regardless of any possible elements of value therein or of the harmless character of some such particular bodies; but there is only a qualified property right therein, as all alike are subject to reasonable regulations and restrictions on the use or disposition thereof, imposed by the state through the exercise of its police powers in the interest of public health and welfare, even though such regulations may incidentally affect interstate commerce in such dead bodies, or require the summary destruction thereof to abate any prospective nuisance.

[fol. 107] California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306, 317, 325;
Gardner v. State of Michigan, 199 U. S. 325, 330, 333;
National Fertilizer Co. v. Lambert, 48 Fed. 458, 461, 463;
Alpers v. City and County of San Francisco, 32 Fed. 503, 505, 506;
Sligh v. Kirkwood, 237 U. S. 52, 59 L. ed. 835, 837, 839;
No. American Storage Co. v. Chicago, 211 U. S. 306, 315, 321;
Mugler v. Kansas, 128 U. S. 623, 31 L. ed. 205, 209, 213;
Samuels v. McCurdy, 267 U. S. 188, 199;
Lawton v. Steele, 152 U. S. 133, 38 L. ed. 385, 388, 389;
Crowley v. Christensen, 137 U. S. 86, 89, 94;
City of Indianapolis v. Ryan (Ind. Sup.), 7 N. E. (2d) 974;
State v. Orr, 68 Conn. 101, 34 L. R. A. 279, 282, 283;
McSween v. State Live Stock San. Board, 97 Fla. 750, 65 A. L. R. 508 and note on 525;
City of New Orleans v. Charoulean, 121 La. 890, 15 Ann. Cas. 46, n. 48;
2 Am. Jur., Animals, Sec. 160.

Point 7

An exercise of the police power which is an exercise of jurisdiction over people and property within the limits of the state and with an ultimate object of protecting the citizens and property rather than to regulate commerce is a valid exercise of the police power. The fact that such ex-

ercise of police power does affect commerce does not invalidate the exercise of the power.

Southern Ry. v. King, 217 U. S. 524;
Smith v. St. Louis, etc., Ry., 181 U. S. 248.

Point 8

Chapter 278, Acts of 1937, has as its object the protection [fol. 108] of health, property and welfare of the citizens of the state, not the regulation of commerce.

Proposition VI

Though dead animals may have been and are articles of commerce, the legislature may, due to the dangers occasioned by their unhealthful and noxious character, remove such dangerous articles from the realm of legitimate articles of commerce by prohibiting their movement either in or out of the state.

Point 1

An article, once a legitimate article of commerce, may be excluded from a state, and its importation prohibited, when the legislature of the state is of the opinion that such articles are or may be injurious to the health, welfare, property or morals of its citizens, and it follows that such exclusion is not a burden upon interstate commerce within the meaning of Article I, Section 8, Clause 3, of the Federal Constitution.

Oregon-Washington R. & Nav. Co. v. Washington, 270 U. S. 87;
Powell v. Pennsylvania, 127 U. S. 678;
Austin v. Tennessee, 179 U. S. 343;
State v. Clason, — Ind. —, 12 N. E. (2d) 750, rehearing denied 13 N. E. (2d) 307.

Point 2

Under the exercise of its police power, a state may exclude from its borders dangerous articles of commerce and may prohibit their importation without inspection to determine if such article is infected or dangerous.

Oregon-Washington R. & Nav. Co. v. Washington, 270 U. S. 87.

[fol. 109]

Point 3

There is no more difference in principle in prohibiting the importation of dangerous or offensive articles into a

state than prohibiting a traffic within the state of such articles even though such are intended for exportation from the state.

Kidd v. Pearson, 128 U. S. 1, 32 L. ed. 346;
Silz v. Hesterberg, 211 U. S. 31;
M. K. & T. R. Co. v. Haber, 169 U. S. 613, 42 L. ed. 878;
Compagnie Francaise & Co. v. Board of Health, 186 U. S. 380, 46 L. ed. 1209;
Holden v. Hardy, 169 U. S. 366, 42 L. ed. 780.

Point 4

A state by the exercise of its police power may prohibit the shipment within its borders, even though destined for exportation, of articles which due to their dangerous, diseased, noxious or deleterious state are no longer legitimate articles of commerce.

It is likewise the prerogative of the state legislature, under the police power to reasonably determine what articles are dangerous to health, morals, and the welfare of this state.

State v. Clason, 12 N. E. (2d) 750, rehearing denied, 13 N. E. (2d) 307;
Sligh v. Kirkwood, 237 U. S. 52;
Oregon-Washington Co. v. Washington, 270 U. S. 87.

Proposition VII

The provisions of Chapter 278, Acts of 1937, provide for the disposition of the bodies of large dead animals as a police regulation, wherein such is accomplished with a minimum chance for spread of diseases and the occurrences of nuisances occasioned by the transportation of such animals [fol. 110] to disposal plants. The final disposition by reduction is similarly subject to stringent supervision to obviate the possibility of the spread of diseases and the occurrences of nuisances. The provisions of the act prohibit the unregulated and unregulateable transportation of such bodies out of the state, and at the same time permits the transportation of such bodies over the highways of the state only when the vehicles, equipment, etc., used in the transportation and disposition of such bodies are subject to inspection, regulation, and disinfection by state authorities.

Point 1

All transportation of dead animals is by owners of licensed reduction plants so that all hauling will be made directly to such plant.

Chapter 278, Sec. 11 (B), Acts 1937.

Point 2

All vehicles used in such hauling must meet certain specifications, be licensed and subject to inspection and disinfection by Indiana authorities.

Chapter 278, Sec. 11 (C. & D.), Acts 1937.

Point 3

The provisions of the Act do not foster an internal commerce in the bodies of dead animals, but under regulatory provisions of the Act such is permitted only for the safest and least noxious disposition that can be made.

Chapter 278, Acts 1937.

Proposition VIII

A state may under the police power exclude from its borders all articles which it, in the exercise of its wisdom, may deem deleterious or dangerous to the welfare, health, morals or property of its citizens, and conversely, it may likewise prohibit the internal traffic in such articles though the same [fol. 111] are destined for interstate commerce as in both instances the effect on interstate commerce of such exercise of the police power is too remote and indirect to constitute a burden on commerce as prohibited by Article I, Section 8, Clause 3, of the Federal Constitution.

Point 1

A state may prohibit the introduction into the state of articles which are dangerous to the welfare, health, morals, or property of its citizens, and in no way burden interstate commerce.

Oregon-Washington R. & Nav. Co. v. Washington, 270 U. S. 87, L. ed. 482;

Compagnie Francaise v. La. Board of Health, 186 U. S. 380, 46 L. ed. 1209;

Hygrade Provision Co. v. Sherman, 266 U. S. 497;

Smith v. St. Louis S. W. R. Co., 181 U. S. 248, 45 L. ed. 847;
Missouri K. & T. R. Co. v. Haber, 169 U. S. 613, 42 L. ed. 878;
Asbell v. Kansas, 209 U. S. 251, 52 L. ed. 778;
Plumley v. Mass, 155 U. S. 461, 39 L. ed. 223;
Bowman v. Chicago, etc., R. Co., 125 U. S. 490, 31 L. ed. 708;
Rasmussen v. Idaho, 181 U. S. 198, 55 L. ed. 820.

Point 2

The state, under the exercise of the police power can prohibit the use in or the hauling, transporting or sending of dangerous, harmful, or noxious articles out of the state when under a reasonable exercise of the police power of the state such articles are no longer recognized as legitimate articles of commerce.

People v. Bishop, 44 Misc. 12, 89 N. Y. S. 709;
Kidd v. Pearson, 128 U. S. 1, 32 L. ed. 346;
[fol. 112] State v. Harrub, — Ala. —, 15 L. R. A. 761;
State v. Stripling, 113 Ala. 120, 36 L. R. A. 81;
Ex Parte Lacey, 93 Va. 159, 31 L. R. A. 822;
Sligh v. Kirkwood, 237 U. S. 52, L. ed. 835;
State v. Harbourne, — Conn. —, 40 L. R. A. 607.

Point 3

The prohibition by a state of the introduction into, and likewise, the prohibition of the use of, or the hauling, transporting or sending of dangerous, harmful or noxious articles out of the state by a reasonable exercise of the police power does not directly burden interstate commerce, but at the utmost, only incidentally or indirectly affects such commerce and as such is not of such a burdensome nature as to constitute a regulation of commerce by the state as is prohibited by Article I, Section 8, Clause 3, of the Federal Constitution.

Silz v. Hesterburg, 211 U. S. 31, 53 L. ed. 75;
Missouri K. & T. R. Co. v. Haber, 169 U. S. 613, 42 L. ed. 878;
Asbell v. Kansas, 209 U. S. 251, 52 L. Ed. 778.
Reid v. Colorado, 187 U. S. 137, 47 L. ed. 108;
Compagnie Francaise v. La. Bd. of Health, 186 U. S. 380, 46 L. ed. 1209;
Bradley v. Public Utility Comm'n., 289 U. S. 92, 95, 97;

State v. Clason, — Ind. —, 12 N. E. (2d) 750, rehearing denied, 13 N. E. (2d) 307;
People v. Bishop, 44 Misc. 12, 89 N. Y. S. 709;
Kidd v. Pearson, 128 U. S. 1, 32 L. ed. 346;
Sligh v. Kirkwood, 237 U. S. 52, 59 L. ed. 835;
State v. Stripling, 113 Ala. 120, 36 L. R. A. 81.

[fol. 113] Proposition IX

The legislative control and regulation of the transportation and disposal of the bodies of dead animals within the state being a valid exercise of the police power not directed at the interstate traffic in such dead bodies, the fact that such regulation may incidentally affect interstate commerce is not such an unreasonable burden upon interstate commerce as to render the act unconstitutional as a violation of Article I, Section 8, Clause 3, of the Federal Constitution.

Point 1

The purpose and policy of Chapter 278, Acts of 1937, and especially Section 11, is not to regulate the interstate traffic in the bodies of dead animals, but to regulate and control the internal hauling and disposal of dead animals to lessen the potential hazard of spreading animal diseases within the state. When the object of an exercise of the police power is to control or regulate persons, property or transactions entirely within the state, such exercise of the police power is not a regulation of interstate commerce though it affect the commercial exports of the state.

Section 1, Chapter 278, Acts of 1937;
Ellwanger v. State, 203 Ind. 307;
Kidd v. Pearson, 128 U. S. 1;
New York, etc., R. R. v. New York, 165 U. S. 628.

Point 2

An exercise of the police power by the state to be declared invalid as a regulation of interstate commerce contrary to the provision of Section 8, Clause, 3, of Article I of the Federal Constitution, must be an unreasonable burden upon such commerce.

Pittsburgh, etc., R. Co. v. State, 172 Ind. 161;
O'Gorman and Young, Inc. v. Hartford Fire Insur-
[fol. 114] ance Company, 282 U. S. 251;
Close & Glenwood Cemetery, 107 U. S. 466;
M., K. & T. R. Co. v. Haber, 196 U. S. 613;
Smith v. Alabama, 124 U. S. 465;

Chicago Dock Co. v. Fraley, 228 U. S. 342;
Rasmussen v. Idaho, 181 U. S. 198.

Point 3

The exclusive power to regulate commerce granted the Federal Government by Section 8, Clause 3, Article I, of the Federal Constitution, does not preclude legislation by the states relating to health, life, safety, etc., which may affect commerce and persons engaged in it.

Sherlock, et al. v. Alling, 93 U. S. 99, 103.

Point 4

The commerce power vested exclusively in the Federal Government does not prevent the states from legislating on local matters though such legislation indirectly affects interstate commerce.

Boston R. & M. Co. v. Armburg, 285 U. S. 234.

Point 5

The power of a state, in the exercise of its police power, to regulate commerce is not a violation of Section 8, Clause 3, Article I, of the Federal Constitution if the regulation imposed is not a direct burden upon interstate commerce.

Southern Ry. Co. v. King, 217 U. S. 524;
Smith v. Alabama, 124 U. S. 465;
Morgan's Louisiana and T. R. & S. Co. v. Louisiana Board of Health, 118 U. S. 455;
Slaughter House Cases, 16 Wall. 36.

[fol. 115] Point 6

If upon its face a legislative enactment has some reasonable purpose and has a real relation to the suitable protection of the health, safety or morals of its citizens and provides reasonable means to achieve the desired result, such enactment is not invalid because it incidentally affects interstate commerce.

Plumley v. Massachusetts, 155 U. S. 461;
Asbell v. Kansas, 209 U. S. 251;
Hennington v. Georgia, 163 U. S. 299;
Rasmussen v. Idaho, 181 U. S. 198;
Chicago, M. & St. P. Ry. Co. v. Solan, 169 U. S. 133;
M., K. & T. Ry. v. Haber, 169 U. S. 613.

Point 7

If a statute can be fairly called an exercise of the police power upon a subject in regard to which the states have a right to legislate, the fact it puts a limitation on what would otherwise be interstate commerce will not necessarily render it invalid.

Asbell v. Kansas, 209 U. S. 251;
Standard Stock Food Co. v. Wright, 225 U. S. 540;
Kimmish v. Ball, 129 U. S. 217;
Lake Shore & M. S. Ry. Co. v. Ohio, 173 U. S. 285;
Commonwealth v. Wright, 191 Mass. 545.

Point 8

Chapter 278, Acts of 1937, on its face has a reasonable purpose and has a real relation to the protection of the health and safety of the state. That the provisions of this act may incidentally or indirectly affect interstate commerce does not affect its validity.

Title of Chapter 278, Acts of 1937;
[fol. 116] Section 1, Chapter 278, Acts of 1937.

Point 9

All the evidence introduced in this cause shows that dead animals are a source of infection and that a regulation of hauling and inspection and disinfection of trucks and plants in Indiana lessen chances of spread of disease.

Tr., p. 37, 39.

Second Assigned Error

The Elkhart Circuit Court erred in overruling appellant's second motion to quash the affidavit herein.

Proposition I

This assignment raises precisely the same question as the first error assigned herein, and for brevity, the appellee will not repeat the propositions and authorities cited thereunder, but hereby incorporates and makes them a part of the brief under this assignment of error.

Third Assigned Error

The Elkhart Circuit Court erred in overruling appellant's motion in arrest of judgment.

Proposition I

This assignment raises precisely the same question as the first error assigned herein, and for brevity, the appellee will not repeat the propositions and authorities cited thereunder, but hereby incorporates and makes them a part of the brief under this assignment of error.

Fourth Assigned Error

The Elkhart Circuit Court erred in overruling appellant's motion for a new trial.

[fol. 117] Proposition I

This assignment raises precisely the same question as the first error assigned herein, and for brevity, the appellee will not repeat the propositions and authorities cited thereunder, but hereby incorporates and makes them a part of the brief under this assignment of error.

[fol. 118] Argument

The defendant was tried and convicted of the offense of illegally transporting the body of a dead animal over the highways of this state to the state of Illinois as prohibited by Section 11, Chapter 278, of the Acts of 1937. All issues raised in the trial court and relied upon in this appeal, deal with the constitutionality of the act. The constitutionality of the statute was first attacked by a motion to quash which was sustained by the trial court. The grounds for the motion to quash were the second and third statutory grounds wherein the defendant raised the question of the constitutionality of the act under the so-called commerce clause of the Federal Constitution, contending thereby that the statute failed to state a public offense due to the unconstitutionality of the statute, and secondly, that the affidavit stated a legal justification of the act. The state perfected an appeal upon the question decided adversely to it by the trial court's sustentation of the motion to quash. That appeal was presented to this court in appeal number 26,905, and the judgment of the trial court was reversed by an opinion rendered by this Court February 7, 1938, which reversal was sustained by a written opinion of this court of March 10, 1938, denying Clason's petition for rehearing. Upon the certification of this cause back to the Elkhart Cir-

suit Court the same objections as formerly raised were made and saved and are presented by the assignment of errors herein.

The question presented by this appeal is whether a state in the exercise of its police power may prohibit the movement over its highways of the bodies of large dead animals when such bodies are destined for shipment out of state, and at the same time permit or suffer the internal hauling [fol. 119] or transportation of such bodies by licensed vehicles to licensed reduction plants located within the state for disposal under the supervision of Indiana officials acting under the standards established by the act? The answer to this question depends upon the scope of the state's police power and to what extent a state may act in preserving the welfare, health, property and morals of its citizens. Can the state in the pursuit of such objects declare former articles of commerce of a noxious or deleterious character to no longer be legitimate articles of commerce and prohibit movements within the state of such, even though they be destined for out of state shipment, while permitting the licensed and regulated transportation of such articles within the state when the same is to a point of disposition within the state; such disposition being under the control of state agencies so as to obviate chances for the spread of disease or the occurrences of nuisances?

In considering the scope of the police power of the state it is safe to say that no activity is exempt from its purview, whether it be one of long duration or of recent occurrence; in either case such activities are subject to regulation or prohibition if the legislature in a reasonable exercise of its discretion decides that the prohibition or regulation of such activities are necessary to promote the peace, safety, health or welfare of the public. The basis of reasonableness in such cases is ultimately determined by facts under a similar test as that applied in cases determining the question of due process of law. Quarantine laws and regulations dealing with the disposition or prohibition of unhealthy, noxious or deleterious articles have always depended upon the reasonableness of the object to be accomplished and it has been repeatedly held by the courts of this and other [fol. 120] jurisdictions that the rights of the individual, even to the property he has in such objects, are subservient to the public weal.

"It is the duty of every government, whether state or municipal, to pass laws or ordinances for preserving the public health, protecting the good order and peace of society, and providing for the abatement of nuisances. Such laws, if they contain nothing more than the necessary restrictions and limitations for the accomplishment of such purposes, are not unconstitutional on the ground that they deprive persons of their property without due process of law. Quarantine regulations, for instance, materially interfere with the free and unobstructed use of private property, and for the time being restrain, to a certain extent, the liberty of individuals. Yet the health, safety, and welfare of the community often demand their enforcement; and such laws have always been upheld as necessary police regulations. Several other instances might be cited where laws of a similar character are sustained; but the authorities are too numerous, and the general principles of law too well settled, to require any extended reference or review. No person has an inalienable right to produce disease, or trade in that which is noxious; and in every community, large or small, some minor rights of individuals must be surrendered for the benefit, protection, health, and general good of all. In Alpers v. City and County of San Francisco, 32 Fed. Rep. 503, the constitutionality of this "dead animal contract" was involved; and it was sustained and declared valid as a legitimate exercise of the police power of the state. Field, J., in delivering the opinion of the court said:

" 'There is no doubt that the contract between the plaintiff and the city and county of San Francisco is one within the competency of the municipality to make. It is within the power of all such bodies to provide for the health of [fol. 121] their inhabitants by causing the removal from their limits of all dead animals not slain for human food, which otherwise would soon decay, and, by corrupting the air, engender disease. And provisions for such removal may be made by contract, as well as the performance of any other duty touching the health and comfort of the city; its authorities always preserving such control over the matter as to secure an observance of proper sanitary regulations. In addition to this general power, the constitution of the state of California which was in force when the contract with the plaintiff was renewed, declares that "any county, city, or township may make and enforce within its limits all such local police, sanitary, and other regulations

as are not in conflict with general laws.'' Article 11, Sec. 11. And the consolidation act of 1863, still in force, provides that the board of supervisors shall have power "to authorize the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health, and the prevention of contagious diseases; to provide by regulation for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways and public grounds of said city and county; and to prevent the running at large of dogs, and to authorize the destruction of the same when at large, contrary to ordinance".' "

National Fertilizer Co. v. Lambert, et al., 48 Fed. Rep. 458, 461.

The same broad interpretation of the scope of the police power was accepted by this court in the case of Walker v. Jameson, 140 Ind. 591, 596, wherein the court said:

[fol. 122] "It is within the general power of a government to preserve and promote the public welfare even at the expense of private rights. 18 Am. and Eng. Encyc., etc., 739, 740. Police power is defined in New Orleans Gas Light Co. v. Hart, 40 La. 474, 8 Am. St. Rep. 374, where it is said: It is the right 'of a State functionary to prescribe regulations for the good order, peace, protection, comfort and convenience of the community which do not encroach on the like power vested in congress by the federal constitution.'

"In Commonwealth v. Alger, 7 Cush. (Mass.) 53, the court lays down the rule that 'rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient.'

[fol. 123] "In Thorpe v. Rutland, etc., R. R. Co., 27 Vt. 140 (149), 62 Am. Dec. 625, it is said:

" 'By this general policy power of the state, persons and property are subjected to all kinds of restraints and diligence in order to secure general comfort, health and prosperity of the state.'

"In Town of Lake View v. Rose Hill Cemetery Co., 70 Ill. 191, the court says: 'The police power of the state is coextensive with self-protection, and is applicably termed

the law of overruling necessity. It is the inherent and plenary power in the state, which enables it to prohibit all things hurtful to the comfort and welfare of society.' Hale v. Lawrence, 21 N. J. Law 714; Tiedoman's Lim. of Police Power, Section 1."

The power of the state under the police power to regulate or prohibit internal activities which endanger public health and welfare is not limited to activities local in scope. Early in the history of our dual form of government, the question of the exercise of this power over interstate commerce arose. The courts have unhesitatingly decreed that a reasonable exercise of the police power by the state is valid even though it affects interstate commerce. The quarantine laws of the states are an example of this power, wherein it has been determined that the states may absolutely prohibit the introduction into the state of harmful or deleterious articles. These cases reason that such articles are no longer legitimate articles of commerce, and where the facts reasonably show that the health, welfare, property or morals of the citizens of the state will be protected by the exclusion of such, the effects upon the inter- [fol. 124] state commerce is not of such a burdensome nature as to constitute a regulation of commerce by the state as is prohibited by the Federal Constitution.

Powell v. Pennsylvania, 127 U. S. 678;
Austin v. Tennessee, 179 U. S. 343;
Plumley v. Mass., 155 U. S. 461;
Rasmussen v. Idaho, 181 U. S. 198;
Sligh v. Kirkwood, 237 U. S. 52.

This question is discussed in Gavit's Commerce Clause, wherein the question is discussed as follows (page 161):

"Although the court has used the word 'regulation,' when applied to state action, it is not the counterpart of 'regulation,' when used in connection with congressional action. It has a broader significance; it may include, as we may see, any interference by a state, in any of its capacities.

"That result is in truth wholly inescapable once the immediately exclusive or paramount character of the congressional jurisdiction is posited. As pointed out above, it is necessary to give to the word 'regulation,' when applied to state action, a legal content. State pilotage and

quarantine laws are, for example, regulations in fact of those engaged in interstate commerce; they may be valid, however, because they are not regulations 'in the constitutional sense.' That is, the validity of state action depends, after all, on something more than the mere determination that there is or is not interstate commerce with which the state is dealing. The solution of the case depends on whether or not it is a lawful 'regulation.' The proper method of settling that question is to apply a test of reason-[fol. 125] ableness."

At page 186 the question is again discussed as follows:

"The truth is that under the present theory the state lays down almost innumerable rules governing the conduct and interests of those engaged in interstate commerce. The question is, is it a valid regulation? Most of the tests and reasons given by the court must be cast aside. The assertion that 'this is not a regulation of interstate commerce but an exercise of the police power' is at best a result and neither a reason nor a rule. The suggestions that the state action is either constitutional or unconstitutional depending upon an inperceptible quality in the 'silence of Congress' is the most facetious argument to which the Supreme Court has ever stooped. Congress by its action cannot enlarge or interpret the Constitution. Certainly its silence has no greater efficacy.

"The tests suggested by some of the cases; is this a direct or substantial burden on interstate commerce; is it an unlawful interference; and all other similar inquiries are misleading and for the most part unusable. They deal with causations and connections, with which it is impossible to deal satisfactorily.

"The truth is that what is done in any given case is that the interest of those engaged in interstate commerce are weighed against the local interests embodied in the state action. The test ought to be that employed in the due process cases; under all of the circumstances; weighing the local [fol. 126] interests against the interests of those engaged in interstate commerce, is the state action reasonably justified? Such a test takes the inquiry out of the darkness of causes, connections, and silence, into the light of an intelligent decision and where in truth the parties are in a position to produce some evidence for or against the validity

of state action. As has been shown heretofore, there is some indication in some of the more recent cases that the court has employed some such test. As has been suggested heretofore, a decision of a case under the Commerce Clause is pretty much 'on information and belief,' but mostly the latter. The test of *reasonableness* would make it possible to employ a method of decision which could better utilize available information." (Our italics.)

The foregoing adequately shows that the police power of the state is sufficiently broad to prohibit or regulate activities touching interstate commerce when such is reasonably necessary for the preservation of the interests of the state and its people. These doctrines have been repeatedly expounded when courts have considered the question of the interference with interstate commerce of quarantine prohibitions or internal regulations, but have not been so fully dealt with when the prohibition is against the introduction of harmful, deleterious or diseased articles into commerce. Such if the precise question we have at hand, coupled with the regulation of the internal traffic in such articles. The legal and factual reasons which prohibit their introduction into the state are just as applicable and the exigencies of the circumstances just as urgent when the harmful or dele- [fol. 127] terious article is introduced into interstate commerce within the state destined for exportation. Such exportation necessarily requires the passage of such articles and their attending dangers through some part of the state, thereby exposing the citizens and their property to dangers and nuisances which the state could prohibit if the dangers arose in a converse manner, that is, the introduction of such. As concerns the introduction of such articles, it is not a regulation of interstate commerce to prohibit that introduction, and appellee submits, it is likewise not a regulation of interstate commerce to prohibit the transportation of such articles out of the state when such is over the highways of the state, even though such transportation is permitted within the state for limited purposes only, such as in the case at hand, a quick disposition of such articles by licensed, regulated, and inspected haulers and disposal plants.

Though no exacting authority has been offered for the preceding statements precisely the same question was presented to the Supreme Court in the case of Sligh v. Kirk-

wood, wherein the State of Florida prohibited the exportation of unripe citrus fruit from the state. The court sustained this action on the ground that such articles were not legitimate articles of commerce and interstate commerce was not regulated by state's action in prohibiting their exportation. The court in sustaining this exercise of the police power said:

"'* * * Whether it is a valid exercise of the police power is the question in the case, and that power we have defined, as far as it is capable of being defined by general [fol. 128] words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. * * * And further, "It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government."' Eubank v. Richmond, 226 U. S. 137, 57 L. ed. 156, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76 Ann. Cas. 1914B, 192.

"The power of the state to prescribe regulations which shall prevent the production within its borders of impure foods, unfit for use, and such articles as would spread disease and pestilence, is well established. Such articles, it has been declared by this court, *are not the legitimate subject of trade of commerce, nor within the protection of the commerce clause of the Constitution.* 'Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each state, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution.' Bowman v. Chicago & N. W. R. Co., 125 U. S. 465, 489, 31 L. ed. 700, 708, 1 Inters. Comm. Rep. 823, 8 Sup. Ct. Rep. 689, 1062." (Our italics.)

The last question presented by this appeal is whether the prohibition against the exporting of such articles pre- [fol. 129] cludes the transportation of such articles within the confines of the state. Appellant in his whole brief relies upon his interpretation of this fact, stating that the

sanctioning of an internal traffic or commerce in the bodies of dead animals precludes any legal prohibition of their exportation. This position is obviously true if the article dealt with is a legitimate article of commerce, universally dealt with in inter- and intrastate commerce. Such is not the case at hand. It is beyond question that the state may prohibit or regulate the possession, transportation or disposal of harmful or deleterious objects. In this case the exportation of such objects is prohibited and appellant assumes that the statute fosters an intrastate traffic in such articles. This is hardly an exact construction or interpretation of the statute. It prohibits all unfettered traffic in such bodies, and permits the hauling of such bodies in licensed vehicles under the sanitary control and inspection of state authorities to licensed disposal plants similarly within the control of the state authorities. It cannot thereby be said the state recognizes and sanctions an internal commerce in a legitimate article of commerce. To the contrary, the exercise of the police power has removed such article from the realm of even a legitimate article of commerce for intrastate transactions and permits or suffers its transportation internally only for the disposition thereof and by a method and process which reasonably effects their disposition in a quick and efficient manner with the least possible chance for the occurrence of nuisances and the spread of disease which normally acompany such activity. The establishment of a system or method of disposing of such bodies which is under the [fol. 130] supervision and control of the state is not a sanction of an internal traffic in such bodies, but is specifically a prohibition to the public at large to engage in such activity, and a licensing of such only to assure a disposition of the bodies with the least possible chance for annoyance or danger to the public. Appellee therefore submits that the entire premise upon which appellant relies is in error and that there is no discrimination between an inter- and intrastate traffic in such bodies. The state is entirely within its police powers when it limits the licensing of haulers of such dead bodies to residents of Indiana over whom the enforcement officers of this act have jurisdiction. One of the provisions of this act provides that all vehicles used in the transportation of these bodies shall be disinfected at the end of each trip so as to lessen the possibilities of the spreading of animal diseases. Such provision can only be en-

forced when those engaged in such hauling are under the constant jurisdiction of Indiana authorities, not when they complete a journey in a sister state. In the absence of such control the offender is free to return to this state and spread disease, and this may happen regardless of the physical condition of his truck and hauling tanks.

In closing appellee specifically calls the court's attention to the authority cited in appellant's brief. Nearly all of these cases were cited by the appellant in his brief for rehearing in the former appeal, and were by this court explained and shown not to be applicable to the facts or the theory of this cause. Specifically, appellant relies upon the case of Jamieson v. Indiana Natural Gas, etc., Co., 128 Ind. [fol. 131] 555, 575, wherein it is said:

"It is, no doubt, so far a commercial commodity that this state cannot prohibit its transportation to another state by direct legislation. . . If it can be taken from the well and transported to another state under a safe pressure, the state cannot prohibit its transportation, nor can the state establish one standard of pressure for its own citizens and another standard for the citizens of other states."

The theory of this and other cases cited by appellant fail to meet the facts and law of the cause presented herein. First, because Chapter 278, Acts of 1937, does not deal with a normal commercial commodity, but deals with an article, which, due to its dangerous and noxious qualities, cannot be considered a legitimate article of commerce. Secondly, the provisions of Chapter 278, Acts of 1937, is not a piece of direct legislation aimed only at interstate commerce; it deals with a health matter and has as its object and purpose the prevention of the spread of disease and the occurrences of nuisances, not the prohibition of the flow of interstate commerce. Thirdly, the facts are distinguishable, in that the unregulated and unregulateable shipment of the bodies of animals out of the state cannot be safely permitted while the disposition of such bodies under the jurisdiction and supervision of Indiana authorities can be permitted and is permitted as the most expedient method of disposal of such noxious articles. While the Jamieson case holds that the state cannot prohibit the sending of gas out if it can be done at a safe pressure, it does not hold that such could not be prohibited if it could only be accomplished at a pressure

[fol. 132] dangerous to the health and welfare of Indiana citizens. The latter is true of the sending out of — state of the bodies of dead animals, for once the conveyance leaves the state, it leaves the jurisdiction of Indiana authorities to the possible detriment of the health and welfare of the people and property of this state. Such a provision is not unreasonable and such merely incidently and indirectly affects interstate commerce. Such incidental and indirect effect upon interstate commerce when occasioned by an exercise of the police power of the state is not of such a burdensome nature as to be invalid under Article I, Section 8, Clause 3, of the Federal Constitution. See Proposition IX, supra.

It is therefore respectfully submitted that the trial court permitted no error in the disposition of this cause, and that the same should in all respects be affirmed.

Respectfully submitted, Omer Stokes Jackson, Attorney General of Indiana; A. J. Stevenson, First Assistant Attorney General; Rexell A. Boyd, Deputy Attorney General, Attorneys for Appellee. Edward H. Knight, Harry M. Stitle, of Counsel.

[fol. 133] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 134-135] In Supreme Court of the United States

Appellant's Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed—Filed December 12, 1938

Comes now the appellant and adopts its assignment of errors in the appeal herein as its statement of the points to be relied upon, and represents that the whole of the record as filed is necessary for consideration of this case.

Dated this 30th day of November 1938.

Wm. H. Thompson, Albert L. Rabb, Attorneys for Appellant.

Due and timely service of appellant's statement of points to be relied upon and designation of parts of the record to

be printed is acknowledged this 30th day of November, 1938 at Indianapolis, Indiana.

Omer Stokes Jackson, Attorney General of Indiana; Rexell A. Boyd, Deputy Attorney General of Indiana, Attorneys for Appellee.

[fol. 136] [File endorsement omitted.]

Endorsed on cover: Enter William H. Thompson. File No. 43,002. Indiana Supreme Court. Term No. 517. Gerrit W. Clason, appellant, vs. The State of Indiana. Filed December 12, 1938. Term No. 517, O. T., 1938.